

## SENATE—Wednesday, May 18, 1994

(Legislative day of Monday, May 16, 1994)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

## PRAYER

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

Let us pray:

*Judgment is turned away backward, and justice standeth afar off: for truth is fallen in the street, and equity cannot enter.*—Isaiah 59:14.

God of Abraham, Isaac, and Israel, not only leadership but all of us need to comprehend the wisdom of the prophet Isaiah, that justice, equity, and judgment are inextricably connected with truth and righteousness. No truth—no justice or righteousness, no judgment or equity.

The prophet Isaiah wrote, "The way of peace they know not; and there is no judgment in their goings: they have made them crooked paths: whosoever goeth therein shall not know peace. Therefore is judgment far from us, neither doth justice overtake us: we wait for light, but behold obscurity; for brightness, but we walk in darkness."—Isaiah 59:8, 9.

Patient Lord, we are a confused people. We seem blind and deaf to reality. But Isaiah reminds us, "Behold, the Lord's hand is not shortened, that it cannot save; neither his ear heavy, that it cannot hear \* \* \*"—Isaiah 59:1.

Mighty God, Father of us all, lead us to the light.

In His name who is the light of the world. 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 assistant legislative clerk read the following letter:

U.S. SENATE,  
PRESIDENT PRO TEMPORE,  
Washington, DC, May 18, 1994.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.

ROBERT C. BYRD,  
President pro tempore.

Mr. AKAKA 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.

## SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 2019, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2019) to reauthorize and amend title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act"), and for other purposes.

The Senate resumed consideration of the bill.

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana [Mr. BAUCUS], is recognized.

Mr. BAUCUS. Mr. President, we are now on the Safe Drinking Water Act again. We have a new consent agreement which essentially provides that all amendments listed must be offered by 3 p.m. today in order for them to be in order. I urge Senators to think long and deep about the meaning of that consent agreement, because it essentially has the effect of saying that if there are amendments up, say, at 1 o'clock being extensively debated and we are still on the amendment at 3 o'clock, all other amendments on the list are out of order. They cannot be brought up once we reach 3 o'clock.

So I strongly urge Senators to bring up their amendments now. It is 5 minutes after 9 in the morning. Those amendments brought up now will have a much better chance of being fully debated. I think the Senate will be in recess beginning at 10:40 a.m. in order to accommodate the joint session of Congress, so that Members of both bodies will be able to hear an address by the Prime Minister of India. That is time which is not available to offer amendments.

I also believe there might be other times during the day which would be more difficult for Senators to offer amendments. So there is not a lot of time remaining between now and 3 o'clock to deal with amendments. We have about 50 amendments. That is 50 amendments in less than 6 hours, or probably in about 4 hours.

I urge Senators to come to the floor and offer their amendments.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. BURNS. Mr. President, I inquire as to what is the pending business for today.

The ACTING PRESIDENT pro tempore. The pending business is S. 2019, the Safe Drinking Water Act.

Mr. BURNS. Mr. President, I ask unanimous consent that I may proceed as if in morning business for no more than 10 minutes.

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

The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS and Mr. BAUCUS pertaining to the introduction of S. 2125 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

(The remarks of Mr. BURNS pertaining to the introduction of Senate Joint Resolution 191 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BAUCUS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana, [Mr. BAUCUS].

Mr. BAUCUS. Mr. President, I ask unanimous consent to proceed as if in morning business on another matter.

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

## MFN FOR CHINA

Mr. BAUCUS. Mr. President, on July 3, China could lose its most-favored-nation tariff status. By an odd coincidence, that is the 150th anniversary of our first trade agreement with China—the Treaty of Wanghia. In that treaty, our main achievement was that China gave us—gave America—MFN status. Then, as now, MFN was neither a concession nor a privilege. It is a basic, reciprocal way to conduct trade.

And MFN conditions are the economic equivalent of a nuclear bomb. If we revoke MFN, we flout the advice of every Asian friend and trade partner. We cut off trade with the world's fastest growing market. We endanger scientific contact with a huge contributor

to global warming. We risk a cold war with the biggest country in the world. It would be folly.

#### IMPORTANCE OF PROMOTING HUMAN RIGHTS

Our goals in human rights are the right goals. I have met a man who was tortured with needles in a Chinese jail, and spoken with families of political prisoners. It makes me angry, and it makes us all angry. But anger is not enough. The question is not whether to promote human rights in China. The question is how to promote human rights in China.

Pressure helps. I, like others, have pushed the Chinese regime on human rights. It is a great source of pride for me to have played some small role in the releases of Gendun Rinchen and Wang Juntao.

But pressure also has limits. Whatever our threat, the regime will make no concession it thinks will weaken its hold on power. MFN conditions simply cannot win basic reform.

#### COSTS OF REVOKING MFN STATUS

And if the threat is real, MFN conditions mean disaster. Take trade. Last year we sold China 9 billion dollars' worth of goods, and 180,000 American jobs depend on those exports. More every day. If we revoke MFN, China retaliates and we lose it all.

On the environment, we lose a chance to slow global warming; protect our fisheries; and help China prevent millions of birth defects and other tragedies. On security, we lose China's cooperation on North Korea. Our problems on missile sales worsen. China would oppose us at the U.N. Security Council. And a new generation of Chinese leaders turns against us as the succession to Deng Xiaoping begins.

And human rights. Revoking MFN puts up to 13 million Chinese out of work. The Government, fearing riots, would clamp down harder, and dissidents would take the blame for wrecking the lives of millions of workers. No wonder the student leader Wang Dan has already called on us to renew MFN.

#### U.S. POLICY PARALYZED

MFN is a great threat. And it scares us as much as China. It makes us lose our nerve when we need to be firm.

We back off on copyright piracy and endangered species because we are afraid of MFN.

In March, the Secretary of State could not afford to cancel his visit when China arrested dissidents. In April, we avoided a formal Presidential meeting with the Dalai Lama. And in May, when the President of Taiwan passed through Hawaii, we would not even let him get a night's sleep in a hotel. We are paralyzed.

#### NO HALF MEASURES POSSIBLE

Supporters of MFN conditions have begun to say we can do it halfway. Revoke MFN for state-owned enterprises, or invent a special tariff category for

China between Smoot-Hawley and MFN.

These half-measures sound superficially attractive. But in reality, they are impossible.

Our laws provide no authority, barring a national economic emergency, for any of them. There is plainly no such emergency. We need legislation even to begin.

If a bill passed, it would be unworkable. Take revoking MFN for state-owned enterprises. In China, ministries run firms for profit. They start joint venture enterprises. Their bosses open companies. Even in theory there is no line between public and private. If there was, our U.S. Customs could never find it in practice.

And if we impose any massive sanction, China will not kowtow and thank us because we did not quite revoke MFN. It will hit back. A trade war will begin, with the same result as revoking MFN completely.

#### THIS YEAR'S MFN DECISION

So the time has come to renew MFN permanently. The question, of course, is whether we can renew it at all.

I believe we can. Emigration and prison labor, the two mandatory conditions in the President's Executive order, are met. And on the five conditions on which we asked for overall, significant progress, we have enough to justify renewal.

China advanced on at least 10 of the 30 articles in the Universal Declaration of Human Rights; gave a real if flawed accounting of political prisoners; released some prisoners; and entered apparently good faith talks on Red Cross access and VOA jamming. No problems are solved. But we have enough to renew MFN and move on to a long-term policy, using four main tools. What are they?

#### NEW POLICY AFTER JUNE 3

First, diplomacy. We need more diplomatic personnel on the issue in China. We should meet more frequently with democrats from China and Tibet, and with the elected leaders of Taiwan. And we should give human rights a permanent, top-level focus with new bilateral and regional Human Rights Commissions.

Second, economic leverage. One area is prison labor, where we should use trade sanctions if China breaks its commitments. Another is the World Bank, where we should oppose loans to abusive provinces and support loans to reformers. A third is tourism, where our travel advisories can help steer American tourists and their money toward reformist provinces.

Third, nonconfrontational methods. Angry speeches get headlines. But a quieter approach gets results. Legal exchange, the Peace Corps, environmental and scientific missions all help.

And fourth, voluntary action from American business. It can be human rights advocacy; adopting codes of con-

duct; preventing pollution and promoting workplace safety.

Companies like Reebok, Dow, and Sears, Roebuck already take these measures. GE and Chrysler have an innovative proposal to reinstate OPIC and TDA in China, with a human and labor rights review on their projects.

#### CONCLUSION

Finally, we should begin by recognizing that trade itself promotes human rights.

Frederick Douglass writes: "to make a contented slave, it is necessary to make a thoughtless slave." To control people, stop them from thinking. Keep them illiterate, ignorant, and isolated.

That is what Mao did. He shut the doors. He burned the books; shut down commerce; and thus controlled the people. But because of trade and economic reform—in part, because China has MFN—his system is beginning to crack.

You see it all over China, particularly in the southern provinces and in the western provinces. But you also see it now in the mainland with commerce and the rise of communications technologies and all the TV antennas that are sprouting up in southwest China, helping democracy thrive.

With MFN in place, the cracks will widen. And in time, China will become the great, respected, democratic nation we all hope to see.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from New Jersey [Mr. BRADLEY].

Mr. BRADLEY. Mr. President, I ask unanimous consent to proceed as in morning business.

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

#### CHINA'S MOST-FAVORED-NATION TRADING STATUS

Mr. BRADLEY. Mr. President, on June 3, President Clinton will determine the fate of China's most-favored-nation trade status. Although the issue has been framed in terms of trade and human rights, in fact the choice is between two competing views of America's relationship with China. The President will be choosing whether to free China policy from the cold war straitjacket embodied in the MFN-human rights linkage. He should end the linkage and free American policy to pursue a more multifaceted approach to United States-China relations.

For over 40 years, America's China policy was subordinated to the cold war struggle between liberal market democracy and communist totalitarianism. After failing to prevent the fall of China in 1949, the United States worked to isolate and exclude Red China from the international community. Then, after over 20 years of a

China policy that tried to pretend that the world's most populist country did not exist, President Nixon played the China card against the Soviet Union, starting a process which led to full diplomatic relations in 1979.

Just as the United States established full diplomatic relations with the People's Republic of China, Deng Xiaoping unleashed the first of the reforms that would open China to the world and transform it from a command society built around a centralized bureaucracy and Communist economy, to a primarily market economy.

Deng's reforms have turned China into an economic giant. Using purchasing power parities, the World Bank has determined that China is already the world's third largest economy. That may be stretching the point but, by any measure, it is clear that China is a major economic power.

Growing at over 10 percent per year, China has become an important engine for global economic growth. For example, China is America's fastest growing export market. American exports to the People's Republic rose by 18 percent last year to \$8.8 billion, triple the figure of a decade ago, making China our 13th largest export market. Even that figure may be an understatement, when reexports through Hong Kong are taken into account. United States companies have also committed billions in investment in China. America's strategy for export-led growth requires continued economic engagement with China.

China's economic growth, with its associated opening to the outside world, is also the primary engine of China's continuing social and political transformation. What do I mean by that? In a Marxian irony, Communist social and governmental structures have become a constraint on China's continued development and are changing under the pressure of China's economic dynamism. Government cannot cope with the billions of pieces of information and the millions of decisions necessary for the functioning of any market economy, let alone a marketizing economy with the size and growth rate of China's. In this information age, economic development requires openness to outside information and outside influences, otherwise no growth—or not as fast. It requires fax machines, telephones, and copiers, which are profoundly subversive to centralized control.

China's regions are gaining power at the expense of the center, as economic decisionmaking becomes more and more decentralized. Foreign firms are training workers and exposing them to western business values and practices. The rigor of law is starting to replace the whim of party dictate in many areas of the economy.

Individuals have freedom in their personal and economic lives that, while

incomplete and clearly inadequate, is unparalleled in modern Chinese history. Economic growth has undermined the dan-wei system, under which the work unit controlled the personal lives of its members. It is also undermining the household registration system which restricted freedom of travel within China.

However, there is a residual cold war-era trap which could slow this progress and put the United States at odds with the forces transforming China—the linkage of MFN and human rights. This linkage embodies two aspects of what I call "old-think," both of which should join the cold war on the dust heap of history.

First, the original Jackson-Vanik requirement for yearly MFN waivers is a product of the United States-Soviet rivalry. The Soviet Union is gone, and Jackson-Vanik should have gone with it.

Second, the additional human rights conditionality contained in President Clinton's Executive order originated in Congress' opposition to George Bush's early reengagement with China's dictators after Tiananmen Square. George Bush has left office, and the human rights-MFN linkage should have left with him.

Mr. President, the time is past due to escape this trap and turn the page to a new policy framework that will do justice to the importance of the United States-China relationship. For America has a big stake in a healthy United States-China relationship. Without responsible Chinese behavior, no stable Asian security equilibrium is possible. Without responsible Chinese behavior, America cannot manage its regional and global security agenda. Trade, the future of Hong Kong and Taiwan, North Korean proliferation, environmental degradation—all require Chinese cooperation. Because China is a veto-wielding permanent member of the United Nations Security Council, Chinese cooperation is vital for the American global agenda from Bosnia to Iraq.

I strongly agree with those who contend that we have an important national interest in improving the living conditions of China's 1.2 billion people. Support for the dignity of the individual is part of who we are as a nation. However, the MFN-human rights linkage has provided too narrow a path to try to influence Beijing's human rights practices. We need a more multi-faceted approach that works with the forces shaping China, not against them.

An effective human rights policy must be based on measures to increase China's exposure to the outside world. Expanding Voice of America and Radio Free Asia broadcasts would swell the flow of unbiased information into China, including much-needed information about Tibet. Increasing educational and cultural exchanges would

expose more Chinese, especially in the younger generation, to our example as a multiethnic, multicultural, stable, and prosperous democracy. The more United States delegations go to China with open access to factories, farms, and businesses, the deeper will be the human rights message, coming from many Americans, not simply from the Government.

Human rights policy must also seek to expand trade. Trade is the motive force behind China's opening to the world. That is why I support China's membership in the World Trade Organization. China's obligations as a WTO member would require Beijing to replace party with law in the economic sphere even as it encouraged China's continued economic dynamism. Growth alone will not democratize China. But it does create the fluid political and social environment, the exposure to the outside world, and the emergence of a class of economically prosperous Chinese, which are the prerequisites for democratization and improved human rights practices.

The alternative, disrupting trade in support of human rights goals, would work against the forces that are liberalizing China. It would run counter to the efforts of the Chinese people themselves to better their lives. It would create an "American recession" in south China that could turn individual Chinese against us.

A third element of human rights policy is genuine dialog. All too often, the United States-China human rights dialog consists of American officials presenting Chinese counterparts with a list of demands. China, supported by other Asians, has responded that Western human rights standards are not applicable in Asia. The result has been an empty exchange of monologs.

The alternative is genuine exchange with the Chinese and other Asians on human rights. While we will not agree with Asian assertions about the relativity of human rights, we can hear them out with the aim of finding common ground on which to build. We can begin by framing some essential human rights principles, such as rule of law, in positive terms. Rule of law is not only in the interest of China, it is in the interest of whoever is governing China. How can China be governed or China's economy be managed without rule of law?

Fourth, as we wait for the last members of the Long March generation to pass from the scene, we must continue our efforts to protect individual Chinese dissidents, such as Wei Jingsheng, by raising their cases at every opportunity and working to improve conditions in detention. As part of this process, it is vital that China and the International Red Cross conclude their negotiations on prison access.

Tough talk on individual cases does not contradict my call for genuine dialog. Rather, once we are talking effectively with the Chinese, appeals on behalf of individual dissidents will have greater impact as part of this genuine dialog. There are many ways to institutionalize such a dialog, such as by creating binational human rights commission or exchanging parliamentary delegations to investigate human rights practices, as the Chinese and Australians already do today.

China's craving for international legitimacy provides additional influence, opportunities to influence. As part of our human rights framework, we must make it clear to Beijing that we will work to deny China the symbols of full international legitimacy as long as China fails to uphold basic human rights standards. That is why I worked to deny China the 2000 Olympics and will, if necessary, work to deny China the 2004 Olympics. China should not host APEC or U.N. agency meetings as long as it abuses its people. For example, China is slated to host the Fourth World Conference on Women next year in Beijing. This is the kind of meeting we must deny or attempt to deny Beijing getting until its human rights practices improve.

Sixth, we must ask business to help by supporting voluntary ethical investor principles, preferably as part of an APEC investment code. The distinguished Senator from Montana alluded to this in his own remarks. This would harness international business in pursuit of practices that encourage China's liberalization, without putting our firms at a competitive disadvantage. This code would not be, as business may fear, a unilateral requirement for business to bear the brunt of Washington's human rights agenda. Nor would it imply that business was the problem. Instead, it would acknowledge that business is a key part of the solution.

Notice how many of the steps I have outlined call for action in a multilateral context. This is no coincidence. For our credibility and impact, we must eliminate the appearance that human rights is only a kind of American preoccupation and actively seek out ways to exert concerted Asian and international pressure on Beijing.

Proposals for partial or targeted revocation of MFN have no place in this framework.

Conceptually, such an approach is wrong because it would maintain the trade-human rights link. It would hurt United States business and consumers, run counter to the forces transforming China, and still leave the administration looking weak.

Tactically, there is no reason to believe China would cave in to partial revocation if the threat of full revocation was not effective.

Practically, given the structure of the Chinese economy, withdrawal of

MFN from state-owned firms would be an administrative nightmare as the Chinese authorities kept restructuring ownership one step ahead of our customers' officers.

That does not mean there is no place for sanctioning specific Chinese products. Products made with prison labor should be sanctioned. If the administration wants to exclude the Chinese-made AK-47's that are coming into this country as so-called sporting rifles, it should, by all means, do so. But link specific sanctions to specific problems, not to human rights in general.

Mr. President, a decision to revoke or continue to condition China's MFN status would be a blunder of historic proportions.

Let me repeat that. Mr. President, a decision to revoke or continue to condition China's MFN status would be a blunder of historic proportions.

Unlike 1949, when the United States could ignore Red China, in the Asia of 1994 we would be isolating ourselves from the world's most dynamic region. We would be standing alone against the forces transforming China, Asia, and the world.

Mr. President, the cold war is over. Let us put it behind us, delink MFN from human rights and begin to realize the real potential of a U.S.-Chinese relationship.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey yields the floor.

Mr. BAUCUS and Mr. ROBB addressed the Chair.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent to speak as if in morning business, and I will soon yield to the Senator from Virginia.

Mr. President, I wish to thank the Senator from New Jersey for that very fine statement. He has thought long and hard about this issue. It is not an easy issue to resolve, and I compliment the Senator on his statement. It is a far-reaching statement. It is one with vision. It is one with a perspective on the issue, and his statement reflects, as the Senator very often does, a long-term view of what is in the best interest of this country.

I might say, Mr. President, he made many very good points. One that particularly struck home to me is when he said it is important with respect to China—probably with respect to any country—to deal less with abstractions and much more with specifics. He mentioned names of individual prisoners and individual dissidents, for example. The more we give a list of individual dissidents with their names and ask for an accounting, the more likely we will see progress on that issue rather than just saying "better human rights in China."

I say this from my own experience because I found that it works. Last August, I spent some time in China trying to get a better idea of what the right policy should be. I met with the wife of a dissident, a man who was very actively involved in Tiananmen, been in prison since Tiananmen, almost 5 years now, in solitary confinement and very ill. She was desperately concerned about her husband, as any wife, any spouse, as would be any loved one.

When we talked about it, I told her I would do what I could to get his release. I met later with President Jiang Zemin, the President of China, and other Chinese officials, and I gave them a letter asking for the release of this particular person.

Mr. President, I was very heartened, and it meant a lot to me, to see him; he was in my office just last week. He has been released. He is in the United States now, getting medical care.

It was proof to me that if you are specific about something, if you push for something, you can get results. I say that only as an example of the kinds of efforts I think will work again not only with China but with any country. We can be specific about Voice of America not being jammed. We can be specific about suggesting that the International Red Cross be allowed to visit. We can be specific about a whole list of items. I do think we should not only be specific, but we also should be very firm about it but be firm with a lower profile. Because the more we publicize the areas in which we are firm, the more we dramatize it, the more it is in the public arena, the more psychologically difficult it is for China, for any country, because it wants to save face from following up and accommodating us in a way that seems to be a good resolution of the issue.

I again thank the Senator from New Jersey. It was a very good statement. It is one to which I hope all Senators pay close attention.

Mr. BRADLEY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey is recognized.

Mr. BRADLEY. I thank the distinguished Senator from Montana. It was a great pleasure for me this morning to follow his own statement. He has clearly played a very constructive leadership role in this whole area, and so I was very pleased to be able to follow his statement today which called for the granting of MFN without condition to China. We hope that is what will be the result. If it is, I think the Senator from Montana can take a great deal of credit for that end.

Mr. BAUCUS. I thank the Senator.

Mr. President, I yield the floor.

Mr. ROBB addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. ROBB. Mr. President, I ask unanimous consent that the period for morning business be extended.

Before the Senator from New Jersey departs the floor, let me say that I join in the sentiments expressed so eloquently by the Senator from New Jersey. I have attempted to articulate a vision similar to that outlined but with less eloquence and less thoroughness. I applaud the Senator from Montana for his ongoing leadership in this area and the Senator from New Jersey for the clearest exposition of views and a realistic assessment of what the situation is and what needs to be done to address that situation as I have heard in a long time.

I am going to ask the permission of the Senator from New Jersey to communicate the text of his statement directly to Winston Lord, the Assistant Secretary for East Asian and Pacific Affairs, who is in the process as we speak this morning of formulating a recommendation to the Secretary of State, who in turn will forward a recommendation to the President on this particular topic. I think that the position and the vision as to how to address a very thorny issue in the international arena has been addressed by the Senator from New Jersey, in my opinion, in precisely the way we ought to address this particular question.

As the chairman of the East Asian and Pacific Affairs Subcommittee of the Foreign Relations Committee, I held a hearing a little over a week ago to talk about it, but as a member of the Finance Committee, with its original jurisdiction, I think the statement the Senator from New Jersey made this morning is extremely important and right on the money. I am very pleased to join in seconding the suggestion the distinguished Senator has made, as he frequently does on important topics, with a very thoughtful review of the facts and some suggestion as to where we might go in the future.

Mr. BRADLEY. Mr. President, I thank the distinguished Senator from Virginia for his comments. His comments, given his position on the Foreign Relations Committee, are as important as the statement itself. I am very pleased that he sees the direction the same as I do, and I thank him very much for his own leadership on this issue and for his clear-sightedness. I appreciate it very much.

#### EXTENSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Virginia [Mr. ROBB], and asks the Senator how long he wishes to speak.

Mr. ROBB. Mr. President, I would ask that the period for morning business be extended for approximately 10 minutes. I think I can complete my statement in that time.

Again, I thank the Senator from New Jersey for one of the most important policy statements I have heard deliv-

ered on this floor in a long time, and again it is very much in sync with the leadership the Senator from Montana has been giving.

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

Mr. ROBB. I thank the Chair.

(The remarks of Mr. ROBB pertaining to the introduction of S. 2126 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

#### SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

##### AMENDMENT NO. 1720

(Purpose: To require risk assessment and cost-benefit analysis regarding major human health or environmental regulations promulgated by the Environmental Protection Agency)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1720.

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

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

The amendment is as follows:

At the appropriate place in the bill, add a new section as follows:

Sec. (a) REQUIREMENT.—Except as provided in subsection (b), in promulgating any proposed for final major regulation relating to human health or the environment, the Administrator of the Environmental Protection Agency shall publish in the Federal Register along with the regulation a clear and concise statement that—

(1) describes and, to the extent practicable, quantifies the risks to human health or the environment to be addressed by the regulation (including, where applicable and practicable, the human health risks to significant subpopulations who are disproportionately exposed or particularly sensitive);

(2) compares the human health or environmental risks to be addressed by the regulation to other risks chosen by the Administrator, including—

(A) at least three other risks regulated by the Environmental Protection Agency or another federal agency; and

(B) at least three other risks that are not directly regulated by the federal govern-

(3) estimates—

(A) the costs to the United States Government, state and local governments, and the private sector of implementing and complying with the regulation; and

(B) the benefits of the regulation; including both quantifiable measures of costs and benefits, to the fullest extent that they can be estimated, and qualitative measures that are difficult to quantify; and

(4) contains a certification by the Administrator that:

(A) the analyses performed under subsection (a)(1) through (a)(3) are based on the best reasonably obtainable scientific information;

(B) the regulation is likely to significantly reduce the human health or environmental risks to be addressed;

(C) there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated and that would achieve an equivalent reduction in risk in a more cost-effective manner, along with a brief explanation of why other such regulatory alternatives that were considered by the Administrator were found to be less cost-effective; and

(D) the regulation is likely to produce benefits to human health or the environment that will justify the costs to the United States Government, state and local governments, and the private sector of implementing and complying with the regulation.

(b) SUBSTANTIALLY SIMILAR FINAL REGULATIONS.—If the Administrator determines that a final major regulation is substantially similar to the proposed version of the regulation with respect to each of the matters referred to in subsection (a), the Administrator may publish in the Federal Register a reference to the statement published under subsection (a) for the proposed regulation in lieu of publishing a new statement for the final regulation.

(c) REPORTING.—If the Administrator cannot certify with respect to one or more of the matters addressed in subsection (a)(4), the Administrator shall identify those matters for which certification cannot be made, and shall include a statement of the reasons therefore in the Federal Register along with the regulation. Not later than March 1 of each year, the Administrator shall submit a report to Congress identifying those major regulations promulgated during the previous calendar year for which complete certification was not made, and summarizing the reasons therefor.

(d) OTHER REQUIREMENTS.—Nothing in this section affects any other provision of federal law, or changes the factors that the Administrator is authorized to consider in promulgating a regulation pursuant to any statute, or shall delay any action required to meet a deadline imposed by statute or a court.

(e) JUDICIAL REVIEW.—Nothing in this section creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If a major regulation is subject to judicial or administrative review under any other provision of law, the adequacy of the certification prepared pursuant to this section, and any alleged failure to comply with this section, may not be used as grounds for affecting or invalidating such major regulation, although the statements and information prepared pursuant to this section, including statements contained in the certification, may be considered as part of the record for judicial

or administrative review conducted under such other provision of law.

(f) DEFINITION OF MAJOR REGULATION.—For purposes of this section, "major regulation" means a regulation that the Administrator determines may have an effect on the economy of \$100,000,000 or more in any one year.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of enactment of this Act.

Mr. JOHNSTON. Mr. President, this is an amendment on risk assessment. It will be agreed to later.

But I ask unanimous consent that it be temporarily laid aside. I see Senator BAUCUS is here. But I think Senator CHAFEE wanted time to prepare a statement.

I ask unanimous consent that amendment be temporarily laid aside.

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

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Louisiana yield the floor?

Mr. JOHNSTON. Yes, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut [Mr. LIEBERMAN], is recognized.

Mr. LIEBERMAN. I thank the Chair.

#### ORDER OF PROCEDURE

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that I be allowed to proceed for up to 5 minutes as if in morning business.

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

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

#### FEDERAL RESERVE BOARD INTEREST RATE POLICY

Mr. LIEBERMAN. Mr. President, for the fourth time in 4 months, the Federal Reserve has raised short-term interest rates—it happened yesterday, as we all know—the discount rate, by half a percent, and the Federal funds rate by half a percent. Apparently, they did so because they have concluded that the economy is overheating and inflation is just around the corner.

Mr. President, I do not know about anybody else, but I have looked around the corner and I have looked right in front of me, and I do not see inflation in this economy. What I do see is these increases in interest rates cutting and stifling the economic recovery that is trying to begin in States like Connecticut.

I do not think anyone wants to return to the inflation levels we suffered through the 1970's. But, at the same time, you really have to wonder whether the people at the Fed are in touch with the daily lives of most working Americans, or even whether they are reading the newspapers.

Stated succinctly, the Fed has raised interest rates in the face of slow growth on the one hand and low inflation on the other. For the first quarter

of this year, the newspapers tell us—you do not have to be an economist—the economy grew at a moderate rate of 2.6 percent. We cannot even feel confident that that is going to continue. Just last week, we saw signs of a softening economy, when retail sales for the month of April dropped by eight-tenths of 1 percent. Yesterday, it was announced that housing starts for April dropped by 2½ percent.

When it comes to inflation, all the news has been good. The big indicators show no signs of inflation. Producer prices for the month of April dropped by one-tenth of 1 percent. Consumer prices for the month of April rose by a meager one-tenth of 1 percent. So in the light of all of the good news about inflation—which is to say there is none—and the dampening news about economic growth, I have to ask: What are our friends at the Fed thinking?

There are no inflation fires to be dampened. The action the Fed took yesterday is more akin to throwing water on a pile of dry sticks that are waiting for a match.

Mr. President, without question, the business of setting interest rates is complicated. The goal is to reach a delicate balance between economic growth and inflation. Rampant growth can spur inflation. But a number of economists are now challenging the old theory that unemployment rates and inflation must move in opposite directions, and there is a lot on the line here. What is on the line are the jobs of millions of Americans and the capacity of millions of American families to buy a home, to buy a car, to pay their credit card bills.

Mr. President, I said a few moments ago that none of us want to return to the high inflation times of the 1970's, but this is not the 1970's, and it is not the 1970's because today we have a truly integrated global economy. I am not sure some of our economists are accounting for that. There is a global labor surplus, and that has been having the effect of holding down the real wages of American workers for more than a decade. Intense international competition will continue to hold prices and wages down. That is why I so fundamentally question the increase in interest rates that has occurred. It is largely due to this international competition, and the fact that corporate America is completing its most expansive and painful downsizing in decades.

Why is this so important? As I said before, there is a lot of economic data flying around, but for a lot of Americans—at least a million of them—this is a question of whether they are going to have jobs or not. There is an economic theory which I fear the Fed is reacting to that you cannot let unemployment go too low, or it will stimulate inflation. Go tell that to the people behind the numbers who, as a result

of rising interest rates, are not going to get the jobs they want because the businesses cannot borrow the money, the people cannot buy the cars, the people will not build the new homes.

The Fed needs to understand that the actions they take not only affect the bond market on Wall Street, but the supermarket on Main Street. The last Fed action sent the prime interest rate to its highest point in 2 years, and that was felt by consumers and small businesses.

Mr. President, we are talking here about credit cards, home equity loans, and auto loans. The Fed's action has sent long-term interest rates to their highest level since 1992, and since these are the rates to which home mortgages are tied, it is consumers who will bear the brunt of higher home mortgage payments.

Last week, the average 30-year fixed-rate mortgage rose to 8.77 percent from a low of 7 percent earlier in this year. For a new home buyer, that is not just percentage points, that is \$125 more in monthly mortgage payments.

We in Connecticut know that these numbers are real to real people. We are still in the midst of what I would describe, at best, as a fragile economic recovery, not an overheated economy. Unemployment is still at unacceptably high levels, and forecasters know New England growth levels will continue to lag behind the rest of the country.

Mr. President, what the Fed is doing is putting at risk our recovery and undercutting the courageous efforts Congress has made to cut the deficit and keep interest rates down.

I will just say this: If the folks at the Fed really think the economy is overheating, I invite them to come to Connecticut, and I suggest they bring a coat, because it is still awfully cool economically in my State.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to address the Senate for 6 minutes as in morning business.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, we have been, in effect, in morning business since 9 o'clock this morning and have not had an opportunity for amendments.

Mr. GRASSLEY. I will not object if the Senator wants to work on the bill and does not want me to speak now.

Mr. BAUCUS. There are about 40 or 50 amendments on the list.

Mr. GRASSLEY. The Senator needs no explanation. Please go ahead.

Mr. BAUCUS. I thank the Senator.

#### SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

#### PRIVILEGE OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that Randy Wetzel,

a fellow of the Environment and Public Works Committee, be afforded privileges of the floor during debate on S. 2019 and any votes thereon.

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

Mr. JOHNSTON. Mr. President, I have a unanimous consent to put in an amendment dealing with the Oil Pollution Act of 1990. Our Committee on Natural Resources dealt with it and had a recommended amendment.

I understand, if I may have the attention of the Senator from Montana, that the committee is knowledgeable about the problem created by the Oil Pollution Act of 1990, and that is that it requires that independents who drill on the Outer Continental Shelf have financial responsibility assets of some \$150 million, which means that when and if that goes into effect, and we understand that—"Open 90" is what we call the Oil Pollution Act of 1990—when and if Open 90 goes into effect and requires \$150 million in insurance or financial assets, it will mean that independents who now drill some 80 percent of the wells on the Outer Continental Shelf will be frozen out of the business.

I do not know how we made that mistake, but the administration is aware of it, and I understand that the Committee on Environment and Public Works is aware of it. I will not press the amendment now if I have the assurance from the chairman that their committee will deal with this matter.

I understand we have a written colloquy that may reflect our agreement on that. I ask the chairman if that is correct.

Mr. BAUCUS. Mr. President, the distinguished chairman of the Energy Committee is correct. This is a matter which the committee has examined, and we worked out an understanding between the two committees. I thank the chairman for being helpful.

Mr. JOHNSTON. I wish the Senator would look at that colloquy. I understand it has been approved by the staff. If that would adequately reflect our agreement, then I will not be putting in the amendment on the Oil Pollution Act of 1990.

Mr. BAUCUS. I must say I am going to have to look at this. It was just now handed to me. If the Senator might proceed and I would like to read this.

#### OIL POLLUTION ACT OF 1990

Mr. JOHNSTON. I would like the assurance of the bill manager, the Senator from Montana, that he will work with me to address an egregious problem with the Oil Pollution Act of 1990.

The Oil Pollution Act of 1990 [OPA '90] was passed and signed into law following the *Exxon Valdez* tanker spill in Alaska. The intent of OPA '90 was to lessen the risk of oil spills and to improve the level of preparedness and responsiveness when spills do occur.

OPA '90 was primarily designed to address the serious damage we all

know to be a risk with tanker traffic. It also included separate requirements for nontanker facilities operating on the Outer Continental Shelf [OCS]. However, in our usual postdisaster zeal, the legislation went far beyond the problem.

Currently the Outer Continental Shelf Lands Act [OCSLA] requires owners of OCS facilities and nontanker facilities to demonstrate evidence of financial responsibility equal to \$35 million. OPA '90 increased the financial responsibility to a much higher level, \$150 million. Unfortunately, this does not relate to the actual experience with nontanker facilities on the OCS, and would in all likelihood make it impossible for smaller, independent oil and gas companies to operate on the OCS.

Between 1974 and 1991, 27 times as much oil was spilled from tankers as that spilled from nontanker facilities. The most expensive spill from an offshore facility on the Gulf of Mexico had cleanup costs of about \$10 million. For that same 1970 spill, which occurred before current safety devices and procedures came into routine use, the Minerals Management Service of the Department of the Interior [MMS] estimates that damages as now provided for under OPA '90 would have been about \$20 million, still significantly below the existing requirement of \$35 million and way below the OPA '90 \$150 million requirement.

The OPA '90 requirement needlessly penalizes the independent producers, those who have stayed and provided jobs while the majors have moved overseas. Over the past 10 years, the total number of operators in the Federal offshore has nearly doubled. The increase has come entirely from independent operators. The majors are still responsible for the bulk of offshore oil and gas production; however, only 15 of the 139 offshore operators are major integrated oil companies. Independents now account for nearly 90 percent of the offshore operators, producing 23 percent of the oil and 36 percent of the natural gas offshore. Since 1988 independents have acquired more lease acreage, paid the majority of bonuses to the Federal Government, and made an overwhelming number of new discoveries. They have also hired 70 percent of the drilling contractors active offshore.

According to the Energy Information Agency and Arthur Andersen, only 20 percent of the offshore operators would be able to self-ensure to meet the \$150 million financial responsibility requirement. The remaining 80 percent will be forced to seek traditional insurance. The National Petroleum Council, in an interim report released in December 1993, estimates these insurance costs could be as much as \$1.10 per barrel of oil. Only small operators would be affected by this, the majors, who

can self-ensure, will not be burdened with these costs.

The Department of Interior recognizes the necessity of amending this provision of the act. Tom Fry, Director of the Minerals Management Service, was quoted in the *Oil Daily* on May 3, 1994 as saying that Congress may want to reconsider the \$150 million mandate. He said, "maybe \$150 million is more than is needed under every circumstance." He also suggested a risk-analysis approach might be the best way to determine how much insurance to require of offshore drillers.

In testimony last month, Assistant Secretary Bob Armstrong told the Energy and Natural Resources Committee that the Department of the Interior is not in a rush to implement OPA '90, "because of the agony that it imposes." He went on to say, "we do not believe that you can take as clear a language as in OPA '90 and fix it by regulation that runs contrary to the clear language \* \* \* some sort of legislative help is going to be necessary to fix that problem."

The Energy and Natural Resources Committee, having repeatedly heard from all quarters that a legislative remedy would be necessary, has in fact endorsed just such an amendment. The amendment gives the Secretary of the Interior the leeway to evaluate risks posed by different facilities—based on size, storage capacity, oil throughput, history of discharges, class or category of facilities—and where appropriate, set a different financial responsibility requirement. This is the same risk based approach that OPA '90 applies to the liability limits for onshore facilities.

The amendment is very narrowly crafted—the only issue it addresses is the level of financial responsibility. It does not mandate a lower requirement, it simply gives the Secretary the necessary discretion for a reasonable rule.

With respect to the committee amendment, Assistant Secretary Armstrong said, "it looks to me like that would fix the problem. \* \* \*"

Does the Senator from Montana agree that there are some legitimate concerns regarding the impact of the \$150 million financial responsibility requirement?

Mr. BAUCUS. I agree that there are concerns with the OPA '90 provision. I am hopeful that some of these problems can be worked out in the rule-making that the MMS is currently engaged in. There may, however, be limited flexibility under OPA '90 in certain areas, requiring some legislative adjustment. It is my belief, though, that any such adjustment must be carefully limited in scope to avoid reopening hard-fought and hard-won compromises agreed to in OPA '90.

I am concerned that the language endorsed by the Energy and Natural Resources Committee gives the Secretary

unfettered discretion and that a financial responsibility requirement could be set that would not assure that money is available to pay for spill damages or that would be less than what is required under existing law. Is this the Senator's intent?

Mr. JOHNSTON. It is not my intent to give the Secretary unfettered discretion. Nor is it my intent to provide for less protection than exists under current law or to allow financial responsibility requirements to be set lower than the amount necessary to cover a realistic assessment of the potential spill damages, given the risks posed by an operation. I would be happy to work with the Senator from Montana to address his concerns.

Mr. BAUCUS. I would like to work with the Senator from Louisiana on language that addresses both of our concerns. Assuming we can reach agreement on legislative language, and I will commit to the Senator that I will work toward that end, I think that the Clean Water Act, or other legislation, would be an appropriate vehicle for such a language.

Mr. JOHNSTON. I thank the Senator. I had intended to offer the amendment today on the Safe Drinking Water Act. However, if we are in agreement that mutually agreed upon language will be included in the Clean Water Act or other appropriate legislation in the near future, I will withhold the amendment for now. I appreciate the Senator's willingness to try to work out a problem of significant importance to the State of Louisiana.

Mr. BAUCUS. I believe we are in agreement. I appreciate the Senator's withdrawing the amendment, and look forward to working with him to resolve this issue.

#### AMENDMENT NO. 1722

(Purpose: To provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources in deep water on the Outer Continental Shelf in the Gulf of Mexico, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1722.

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

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

The amendment is as follows:

At the appropriate place in the bill, add the following, numbered accordingly:

SEC. . AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT.—The Outer Continental Shelf Lands Act, as amended, is amended by redesignating section 8(a)(3) (43 U.S.C. 1337(a)(3)) as section 8(a)(3)(A) and by adding at the end thereof the following:

“(B) The Secretary may, in order to promote development and new production on a producing or non-producing lease, through primary, secondary, or tertiary recovery means, or to encourage production of marginal or uneconomic resources on a producing or non-producing lease, reduce or suspend any royalty or net profit share set forth in the lease.

“(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, no royalty payment shall be due on new production, as defined in clause (iii) of this subparagraph, from any lease located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, and the Eastern Planning Area of the Gulf of Mexico west of the lateral seaward boundary between the States of Florida and Alabama, or for any lease in the frontier areas of Alaska, which shall, at a minimum, include those areas with seasonal sea ice, long distances to existing pipelines and ports, or a lack of production infrastructure, until the capital costs directly related to such new production have been recovered by the lessee out of the proceeds from such new production.

“(ii) With respect to any lease in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, upon application by the lessee, the Secretary shall determine within ninety days of such application whether new production from such lease would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider all costs associated with obtaining, exploring, developing, and producing from the lease. The lessee shall be afforded an opportunity to provide information to the Secretary prior to such determination. Such application may be made on the basis of an individual lease or unit (as defined under the provisions of 30 CFR part 250). If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) of this subparagraph shall not apply to such production. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within sixty days of such application. The Secretary may extend the time period for making any determination under this clause for thirty days if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. In the event that the Secretary fails to make the determination or redetermination upon application by the lessee within the time period, together with any such extension thereof provided for by this clause, the relief from the requirement to pay royalties provided for by clause (i) shall apply to such production.

“(iii) For purposes of this subparagraph, the term—

“(aa) ‘capital costs’ shall be defined by the Secretary and shall include exploration costs incurred after the acquisition of the lease and development costs directly related to new production. The terms ‘exploration’ and ‘development’ shall have the same meaning contained in subsections (k) and (l) of sec-

tion 2 of this Act except the term ‘development’ shall also include any similar additional development activities which take place after production has been initiated from such lease. Such capital costs shall not include any amounts paid as bonus bids but shall be adjusted to reflect changes in the consumer price index, as defined in section 1(f)(4) of title 26 of the United States Code; and

“(bb) ‘new production’ is—

“(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

“(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; and

“(iv) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for Light Sweet crude oil exceeds \$28.00 per barrel, any production of oil subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rate, and the lessee's gross proceeds from such oil production, less Federal royalties, during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

“(v) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for natural gas exceeds \$3.50 per million British thermal units, any production of natural gas subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rate, and the lessee's gross proceeds from such natural gas production, less Federal royalties, during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

“(vi) The prices referred to in clauses (iv) and (v) of this subparagraph shall be changed during any calendar year after 1994 by the percentage if any by which the consumer price index changed during the preceding calendar year, as defined in section 1(f)(4) of title 26 of the United States Code.”.

SEC. . REGULATIONS.—The Secretary shall promulgate such rules and regulations as are necessary to implement the provisions of this Act within one hundred and eighty days after the date of enactment of this Act.

SEC. . AREA-WIDE LEASING.—The Secretary shall not implement the system of tract nomination for oil and gas leasing in the Central and Western Planning Areas of the Gulf of Mexico under the Outer Continental Shelf Lands Act, and shall use the existing area-wide system of leasing in such areas.

SEC. . REPORT TO CONGRESS.—(a) The Secretary shall review Federal regulations and policies within the Secretary's jurisdiction which create barriers and disincentives that unnecessarily preclude new production, or result in premature abandonment or suspension of existing production of oil and gas on Federal lands, including the Outer Continental Shelf. Such review, conducted with the participation of all interested parties, shall assess how Federal policies could be modified to reduce compliance costs and improve the

cash flow of oil and gas operations on Federal lands. The review shall include administrative compliance, royalty collection, timing of operational and production management requirements, such as permanent plugging and abandonment of wells, and any other requirements which unduly burden natural gas and oil exploration, production and transportation on Federal lands.

(b) The Secretary shall evaluate the impact, if any, of current royalty rates for oil and gas on Federal lands, both onshore and offshore, on the viability of undeveloped fields by general category, such as production volume, crude quality, water depth, and distance from existing infrastructure. The review shall be based on current industry technology and cost information, and shall assess how a reduction in Federal oil and natural gas royalties would encourage development.

(c) The Secretary shall report to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives on the review required by this section and actions taken as recommended pursuant to such review, or the reason such actions have not been taken, within ninety days of the date of enactment of this Act.

Mr. JOHNSTON. Mr. President, as I think all Senators are aware, domestic production in the United States is plummeting, imports are escalating at a frightening rate. The balance of payments caused by this is very negative to the United States.

One of the reasons that domestic production is plummeting is the high cost of drilling in the Outer Continental Shelf. For that reason the Committee on Energy and Natural Resources has reported S. 318, dealing with the question of drilling in the deep water on the Outer Continental Shelf.

What this bill does is first clarifies the existing law whereby the Secretary has authority to reduce royalty for producing or nonproducing leases in the Outer Continental Shelf. In other words, the Secretary has discretion at the present time to reduce those royalties. This clarifies that authority where there are expensive secondary or tertiary recovery technologies that need to be employed on those Outer Continental Shelf wells.

The principal thing that the bill does is provides that with respect to deep-water leases, that is 200 meters or more, that royalty shall be suspended until the capital costs are recovered in those cases where the wells would not otherwise be drilled.

The Secretary is mandated to determine whether or not it would be economic to drill or to produce those wells without this incentive in the form of royalty reduction.

If the wells would be drilled anyway, then there is no incentive; there is no reduction in royalties. It is only when those wells that would not be drilled otherwise that the incentive in S. 318, which is this amendment, would apply.

The CBO has scored this at zero for the very logical and understandable reason that if a well is not going to be

drilled, it is not going to produce any royalty, so there is no loss to the Federal Government. There is actually a gain to the Federal Government, because if you get an otherwise non-economic well to be drilled, and you do drill it, and then it is going to produce income, it is going to produce income taxes and eventually will produce royalties once the capital costs are recovered.

I can see no reason why anyone would oppose this amendment. I urge my colleagues to vote affirmatively on it.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM] is recognized.

Mr. METZENBAUM. Mr. President, will the Senator from Louisiana yield for a question?

Mr. JOHNSTON. Of course.

Mr. METZENBAUM. Mr. President, does the Senator's amendment have the same language as that which is found in S. 318, the Senator's bill that was introduced on April 11, 1994?

Mr. JOHNSTON. Yes. There have been some changes. The Oil Pollution Act of 1990 language has been deleted.

Mr. METZENBAUM. But it is substantially the same?

Mr. JOHNSTON. Yes, it is substantially. Correct.

Mr. METZENBAUM. I thank the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Ohio [Mr. METZENBAUM], is recognized.

Mr. METZENBAUM. Mr. President, one of the things is sort of an absurdity. First of all, there is a pending piece of legislation on this subject which in the normal course of events would be considered by the appropriate committee. It has been considered by the appropriate committee, and it is my understanding that that bill is now pending at the desk.

This is an effort on the part of my friend from Louisiana to circumvent the fact that there are certain holds that are on that measure. It is indicated that a number of us are prepared to debate it at considerable length.

Frankly speaking, this is a giveaway. This is a plain, simple giveaway of the Treasury's dollars. And when the Senator from Louisiana says it is scored at zero, that is sort of specious reasoning.

It is scored at zero because it is only permissible for the Secretary to suspend these royalties or net profit sharing that are presently in the lease. That is what is there. The reason it is scored at zero is because he may never do that to any of them. But the fact is, knowing the way Washington works, you can bet all the tea in China that the Secretary will come under political pressure to suspend the royalties or the share of the net profits that are called for in the leases as they were negotiated.

What we are talking about here is these oil companies, these drillers, ne-

gotiated with the Federal Government—and I must say in an aside that my colleague from Louisiana knows 100 times more about the oil industry and drilling than the Senator from Ohio, but the Senator from Ohio knows at least as much as the Senator from Louisiana about how moneys go into the Treasury and how moneys fail to get in the Treasury, how we are always talking about balancing the budget around here, and running out and telling our constituents how strongly we want to balance the budget.

This is a raid upon the Federal Treasury, and let no one be kidded about it. Frankly, it does not belong in this bill. It has no relationship to this bill. This is an inappropriate way of trying to go around the bend to see to it that we do not have a full debate on the floor of the Senate on this particular pending legislation.

But the language of the bill—and I have not seen the amendment, but my colleague indicates it is the same—“The Secretary may,”—and I skip some language—“in order to promote development and new production on a producing or nonproducing lease, through primary, secondary, or tertiary, recovery means, or to encourage production of marginal or uneconomic resources on a producing or nonproducing lease”—here is the relative language—“reduce or suspend any royalty or net profit share set forth in the lease.”

These people entered into an agreement, and this is an effort to remove from them the obligation to live up to the terms of that lease.

What kind of Senators are we that we would even consider such a proposal? You make a deal, you live up to the terms of your deal. You do not go to the Congress of the United States and say take away our obligation.

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

Mr. METZENBAUM. When I am through I will yield.

Then it goes on to say: “Notwithstanding the provisions of this Act other than this subparagraph, no royalty payment shall be due on new production, as defined in clause (iii) of this subparagraph, from any lease”—and it goes on to define the leases. And then it adds “and the Eastern Planning Area of the Gulf of Mexico,” et cetera. Then it goes on to say other terms.

But when you get all said and done, this is a wolf in sheep's clothing. This amendment is bad business. This amendment, in my opinion, if enacted, would be irresponsible on the part of the U.S. Senate.

I address myself to my colleagues on the other side of the aisle with respect to this amendment. I am known as a liberal Member of the U.S. Senate, and I am one who is willing to give away the Federal assets—which is not true, but that is some of the reputation. But

many of those on the other side of the aisle are known as the conservatives. They are the ones who are standing up day in and day out and saying we have to balance the budget, and I agree with them on that. But the fact is in many instances their voices have been louder than mine.

Here is an instance in which you are called upon to face the issue, to run head on into the question of whether or not you are going to permit someone to come in and dig out a portion of the Federal revenues.

It is a subtly disguised raid on the Federal Treasury to benefit big oil and little oil. Frankly, I do not care whether it is big oil or little oil. There is not any reason that someone who has entered into an agreement should have the right to get out from under the obligation of that agreement, and there is not any reason why those who are drilling in Federal waters should not be paying a reasonable royalty, whether it is an old lease or a new lease. According to the Senator's amendment, royalty lease payments would be suspended for drilling on the Outer Continental Shelf until the oil company recouped its capital costs.

Why? You would not do that if you were drilling on some private farmer's piece of land or any other person's piece of land. Why should you do it because you are on the Federal land? Because Big Daddy is always willing to give away the Federal assets if you have the right people proposing the amendment.

And I do not say this in a negative manner about my colleague. He is doing what he thinks is right for his constituents in Louisiana. But I think it is wrong for the constituents of every other Member of the U.S. Senate and all of the other States of this country.

Frankly speaking, this would just be a windfall. It would be a giveaway of I do not know how many billions of dollars. I believe I saw some figure like \$1.750 billion. But, whatever, if the amount is only \$100; but it is not \$100, you can be sure of that.

I have a note here from my staff.

According to an earlier analysis of the bill, the Treasury would lose as much as \$1.9 billion—\$1.9 billion. When we are fighting for money to take care of the homeless, to take care of those with Alzheimer's, to take care of those with AIDS, to take care of senior citizens, to provide health programs for this country, are we in a position to even take the chance of losing \$1.9 billion or any lesser amount, whatever it may be?

The version we are talking about today disguises the loss by hiding behind it the discretion of the Secretary. Well, if the Secretary does not want to do it—I do not remember hardly any Secretary that was not subject to some political pressure, just as probably

every Member of the U.S. Senate is probably subject to some political pressure.

There is not any reason under the sun for this matter to be in this bill. It has not anything to do with it. And there is not any reason, logic, or justification for us to adopt this amendment.

Frankly, this whole proposal is just a gimmick to hide the true impact of the bill. This question of making it permissive with the Secretary does not really make it a better bill.

If you really look at it, the amendment is nothing more than a plain subsidy.

You would think that we had learned our lesson on royalty relief earlier this week when the Secretary gave away mineral rights worth \$11 billion for the princely sum of \$9,000. I do not blame that on the Secretary. It was under circumstances that he could not help. But the fact is, we gave away billions of dollars of mineral rights to a Canadian company to permit them to mine gold for the paltry sum of \$9,000. And yet today the Senator from Louisiana is asking the Senate to approve yet another raid on the Treasury.

I understand this amendment is designed to spur job creation. I do not know of many bills that have come to the floor that somebody does not say it will spur job creation. It will not spur job creation. It will spur a raid upon the Treasury, and it will mean that the Federal budget will be more negative than it presently is. The deficit will be a greater one. Frankly, it is the wrong way to go about creating jobs.

Mr. President, I want to make it clear to my colleagues that if this amendment is not tabled—and it is my understanding that the manager of the bill is considering that approach—the Senator from Ohio will be prepared to discuss this subject and elaborate upon all of the reasons why this amendment should not be adopted. I think it is a horrendous amendment. I think it is just exactly the wrong way to go.

I salute my colleague from Louisiana, who is really one of the more conservative Members of the Senate and probably more of a leader in that area as far as balancing the budget. The Senator from Ohio is oftentimes willing to vote for human service programs the Senator from Louisiana may have some reservation about.

This is not the way to go. I do not believe the Senator ought to press his amendment. I think this is an amendment that had a bad beginning, a bad birth, and I hope it has an early death.

Mr. JOHNSTON. Will the Senator yield?

Mr. METZENBAUM. Surely.

Mr. JOHNSTON. Mr. President, I am not certain the Senator understands. Does he understand that there is no incentive, no royalty relief unless the Secretary determines that the well

would not otherwise be drilled or produced?

Mr. METZENBAUM. I do not believe that is the way the language reads. I do not believe that is what the language is.

It says: "The Secretary may, in order to promote development and new production on a producing or nonproducing lease"—I assume this is the same language that is in the amendment—"through primary, secondary, or tertiary recovery means, or to encourage production of marginal or uneconomic resources on a producing or non-producing lease. \* \* \*"

That does not conform, if I may say so, to what the Senator has just asked of me.

Mr. JOHNSTON. Mr. President, the Senator apparently did not understand the amendment. If I can invite his attention to page 2 of the amendment.

Mr. METZENBAUM. I do not have the amendment in front of me. I only have the bill. I have not been afforded a copy of the amendment.

I will take a look at it.

Mr. JOHNSTON. I invite his attention to page 2. That points out, with respect to any lease in existence on the date of enactment, the Secretary shall determine "whether new production from such lease would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph."

And then it goes ahead and states that, "If the Secretary determines that such new production would be economic in the absence of relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) of this subparagraph shall not apply to such production."

In other words, the Secretary of the Interior, who is the former President of the League of Conservation Voters—hardly an organization founded or promoted by big oil and hardly a big oil background—will have to determine, with every one of these leases, whether it would be economic to drill the lease in the absence of this incentive. And if the lease would be drilled anyway, then he is directed not to give the relief. That is why CBO has scored this amendment as zero.

Mr. President, we have leases out there that are not being drilled. I mean, how would we lose anything at all by this amendment? We can only gain by it.

I know the Senator is fair-minded, and I know he will read this. And if he concurs with what I think is the very plain language—and, in all fairness, he did not have the amendment—if he concurs with that, I hope he will withdraw his objection.

Mr. President, we have lost 450,000 jobs in the oil and gas business in America. That is more than all the jobs lost in autos and steel combined.

In 1992, for the first time, major oil companies spent more on production and exploration outside of this country than they spent in America. Crude oil production decreased almost 3 percent in 1992 and in July of 1993 reached its lowest level since 1958—the lowest level of domestic oil production, last year, since 1958—and it is dropping rapidly. During 1992, crude oil reserves actually dropped by 937 million barrels. Domestic oil and gas drilling decreased nearly 17 percent during 1992 and was the lowest level since 1942.

So, Mr. President, this is a serious problem for the country. I mean, this is no giveaway for big oil companies. Look, the big oil companies are going out of the country. Now the question is whether you want them to do all their production and exploration out of the country where we pay royalties to Saudi Arabia or Nigeria or Indonesia, or whether you want to drill on wells in the United States that would not otherwise be drilled.

I mean, this is a modest attempt in those areas in very deep water—which are very expensive, which would not otherwise be drilled—to give to the former president of the League of Conservation Voters, that is Bruce Babbitt, the Secretary of the Interior—the discretion to determine that these wells would not otherwise be drilled and give this incentive.

The CBO says it costs the Treasury nothing. If it costs the Treasury nothing, it is actually going to be a gain for the Treasury because a well that otherwise would not be drilled will have a lot of economic activity, will have payment of wages and income taxes, and eventually royalty payments when the capital costs are recovered.

I can see no valid objection to this amendment. The administration has endorsed it in its thrust. They want to tweak some of the provisions in conference.

I cannot for the life of me see why we would not agree to this amendment.

JOINT MEETING OF THE TWO HOUSES—ADDRESS BY THE PRIME MINISTER OF THE REPUBLIC OF INDIA

RECESS UNTIL 12:15 P.M.

The PRESIDING OFFICER. Under the previous order, the time of 10:40 having arrived, the Senate will now stand in recess until the hour of 12:15 and proceed to the Hall of the House of Representatives for the joint meeting.

Thereupon, the Senate, at 10:41 a.m., recessed until 12:15 p.m., and the Senate, preceded by the Secretary of the Senate, Martha S. Pope; the Sergeant at Arms, Robert Laurent Benoit; and the President pro tempore [ROBERT C. BYRD], proceeded to the Hall of the House of Representatives to hear the address by the Prime Minister of the Republic of India.

(The address delivered by the Prime Minister of the Republic of India to the joint meeting of the two Houses of Congress is printed in the Proceedings of the House of Representatives in today's RECORD.)

At 12:15 p.m., the Senate having, returned to its Chamber, reassembled and was called to order by the Presiding Officer [Ms. MOSELEY-BRAUN].

SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senate will return to consideration of S. 2019, the Safe Drinking Water Act.

The pending question is the amendment of the Senator from Louisiana.

The Chair recognizes the majority leader, the Senator from Maine.

Mr. MITCHELL. Madam President, I rise in strong support of legislation to reauthorize and improve the Safe Drinking Water Act.

I want to commend Senator BAUCUS, chairman of the Environment and Public Works Committee, and Senator CHAFEE, the ranking minority member of the committee, for their determined effort to develop fair and balanced legislation to reauthorize the Nation's drinking water program.

Reauthorization of the Safe Drinking Water Act is a high priority for communities all across the country and in my home State of Maine. Over the past several years, I have met with many representatives of large and small water systems in Maine. The vast majority of people who run water systems in this country are committed to providing the safest possible drinking water.

Unfortunately, many State and local officials in Maine and around the country have lost faith in the drinking water program. They are not convinced that the many new requirements they face are truly needed to protect public health. They are convinced that the program costs too much. They want the Congress to act promptly to amend and improve the act.

Public confidence in the quality of drinking water has also declined. Reports of serious illness and death as a result of contaminants in drinking water in Milwaukee have raised public concern.

Here in Washington DC, hundreds of thousands of people boiled water for several days following reports of possible contamination.

The legislation being considered today starts the long process to rebuilding the confidence of State and local officials and the public in the drinking water program.

Everyone agrees that safe drinking water should be available to every American.

In the 1986 amendments to the act, the congress responded to the failure,

by the EPA to develop and implement drinking water standards and directed EPA to take aggressive steps to address threats to public health from contaminants in drinking water.

We know today that, while EPA responded to the 1986 law, we failed to establish the foundation of cooperation, understanding, and trust among local, State, and Federal officials necessary for successful implementation of a national drinking water program.

The bill before us responds to many of the concerns of municipal and State officials while preserving and enhancing the important public health protections of the current act.

A first, essential step in reauthorizing the drinking water program is to adopt President Clinton's proposal to use \$1 billion a year to establish State loan funds to assist communities in financing of drinking water treatment and related projects.

Many local and State officials have rightly complained that the Federal Government sometime asks other levels of government to address important national policy objectives without becoming a partner in financing the steps needed to accomplish those objectives.

The Safe Drinking Water Act is often cited as an example of a Federal law imposing unfunded Federal mandates.

By enacting the President's proposal, we will be applying to the drinking water programs the principle of Federal, State, and local partnership which has served us well in financing the cleanup of rivers and streams under the Clean Water Act.

The bill reported by the Senate Environment and Public Works Committee includes the President's proposal for a new State loan fund.

The bill authorizes \$600 million in 1994 for the new State loan funds and \$1 billion in fiscal year 1995 through 2000. States are to provide a 20-percent match to this funding. Total funding provided under the bill is almost \$8 billion.

The EPA has estimated that the capital cost of complying with drinking water regulations is about \$8 billion. In very general terms, the bill provides financial assistance at a level comparable to the costs of major projects to assure that water is safe to drink. The bill does not create an unfunded mandate. It funds an existing mandate.

More importantly, the bill recognizes the special financial problems faced by small communities. Because of limited economies of scale, customers of small drinking water systems pay the highest rates to comply with drinking water treatment requirements.

The new drinking water loan fund proposed in the committee reported bill gives top priority to protecting customers of small systems from sometimes astronomical rate increases.

States are authorized to use 30 percent of funds to forgive repayment of

loans for communities which meet affordability guidelines adopted by a State.

States are also given new authority to extend repayment schedules beyond the otherwise applicable schedule of 20 years where an extension would help a disadvantaged community keep rates under control.

For example, under the bill, the State of Maine will develop guidelines for determining when a drinking water treatment project is not affordable for a community. The State might decide that rates of more than 1 percent of median household income are excessive. A community proposing to build a \$1 million dollar treatment facility might find that, even with a low interest loan, the project will increase rates to 1.5 percent of median household income. The State would then give the community a \$1 million loan at zero interest and then forgive repayment of principal or extend loan repayment periods as needed to keep household rates below 1 percent of median household income.

We have heard lots of rhetoric over the past several months about the Federal Government not being a responsible partner with other governments in funding essential public services like safe drinking water.

Some have called for dramatically reducing our commitment to protection of public health and the environment. This bill rejects the notion that we should retreat from essential public health protection.

At the same time, it recognizes the important role the Federal Government must play in assisting communities, especially the most needy communities, in financing projects to assure safe drinking water.

While financial assistance to communities is essential for reform of the drinking water program, financial assistance alone is not sufficient to restore the confidence of the public and State and local officials in the national drinking water program.

Rebuilding confidence in the drinking water program requires that we address three major issues—the problems faced by small communities; the costs of drinking water monitoring; and the process for setting enforceable drinking water standards. The bill before us addresses each of these issues in a balanced, responsible manner.

One of the most difficult problems we face in implementing the national drinking water program is that drinking water quality that is generally affordable for people served by big systems is very expensive for people served by small systems because of limited economies of scale.

The bill addresses this fundamental problem by directing the EPA to identify small system technology which is affordable for systems of under 10,000 persons or for even smaller systems.

Small system technologies are available to communities only based on approval by the State of a new small system variance provided for in the bill. Small system variances are to be provided only after the State has determined that no other management or treatment option is available. States are not to grant small system variances if the State finds that the community can afford to comply with a drinking water standard. States are not to grant small system variances if an alternative source of water is available. And, States are not to grant small system variances if the system can be restructured or consolidated with another system to assure its long-term viability.

Many communities around the country are concerned about the high cost of monitoring for drinking water contaminants under regulations developed by the EPA. The bill before us today provides substantial relief from monitoring costs while maintaining sufficient monitoring to assure the protection of public health.

A key monitoring provision of the bill provides for substantial reduction in monitoring costs for small communities which do not detect a contaminant in initial tests. This provision could reduce these costs for these communities by up to 75 percent.

The bill also provides that States may submit to EPA proposals to tailor monitoring requirements to meet the specific water quality circumstances in the State. This new authority will assure that drinking water systems are not required to conduct monitoring for contaminants that are not a threat to public health in the State.

One of the most hotly debated issues related to the Safe Drinking Water Act is the process for selection and regulation of contaminants in drinking water. After considerable discussion and debate the committee developed a legislative proposal which is a sound and responsible compromise. The bill will maintain the high standard of public health protection which we all expect but will also allow the EPA Administrator greater flexibility in selection of contaminants for regulation and recognizing opportunities for reducing treatment costs.

The bill revises the process for selecting contaminants to be regulated under the act. It eliminates the requirement for the regulation of 25 new contaminants every 3 years. It assures that the EPA will use sound science and high quality data in determining which contaminants pose the greatest health threat and need to be regulated.

In addition the bill reforms the process for actually setting enforceable drinking water standards.

The basic policy of the current law is retained, but the EPA Administrator is given new authority to recognize cost saving opportunities in very specific circumstances.

Under the current law, EPA sets the standard at the concentration level which is as close to the no adverse effect level as is feasible, taking technology and cost into account. The Administrator is to continue to set standards in this manner. However, if the Administrator determines that, for a cancer causing contaminant, a treatment technology exists which provides substantial cost savings, while at the same time providing public health protection which is not significantly different from the level which would apply under the law, the Administrator may set the standard at the level which can be attained by the alternative technology. This authority is discretionary and to be used only in cases where the Administrator judges it to be appropriate.

The committee considered applying this same basic policy to the setting of standards for contaminants other than cancer causing substances. There is substantial concern, however, that there is not an adequate scientific basis for changing the approach to standard setting provided in current law for non-cancer causing substances.

For example, it is not now possible to develop a probabilistic risk estimate for noncarcinogens. Another problem is how to account for the different health effects of a contaminant or group of contaminants. A single contaminant may cause nervous system effects and kidney damage.

Madam President, I ask unanimous consent that a letter from EPA Administrator Carol Browner and a memorandum from Assistant Administrator Lynn Goldman addressing these issues be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 2)

MR. MITCHELL. Madam President, in light of this concern for revising the standard setting process for noncancer causing substances, the manager's amendment to the bill provides for a study by the National Academy of Sciences. The Academy is to assess whether there are sound scientific practices which would allow the Administrator to make informed and responsible judgments about revising concentration levels for noncancer causing substances in the manner proposed for cancer causing substances.

If the Academy finds that there are sound scientific practices which would allow informed and responsible judgments about revising concentration levels for noncancer causing substances and makes recommendations regarding such practices to the Administrator, the Administrator may publish in the Federal Register scientific guidelines addressing this topic.

After such guidelines are published, the Administrator may follow the

guidelines in setting standards for non-cancer causing substances without further approval from the Congress.

I am confident that the standard setting policies we have proposed will assure continued protection of public health while giving the EPA Administrator the discretion to recognize opportunities to reduce costs for communities and ratepayers.

I am especially pleased that the bill includes several provisions which are important to my home State of Maine.

Radon is a naturally occurring gas which is a known cause of lung cancer. Many water systems in Maine draw drinking water from ground water and many of these ground water wells have high levels of radon. The high levels of radon in Maine groundwater are probably the most significant threat to public health associated with drinking water in the State.

Unfortunately, the development of a radon in drinking water standard has been delayed for several years by substantial scientific controversy and the complexity of this issue.

EPA has proposed to regulate radon in drinking water on the basis of the health effects from both ingestion and inhalation. The proposed standard, however, provides for reducing the risk from radon in drinking water to a level that is less than the risk resulting from exposure to radon to outdoor air.

In other words, drinking water systems would have to remove enough radon from water to keep radon in the air in a home well below the level that exists in the air outside the home.

The bill reported by the committee responds to this concern by allowing States and water systems the option of meeting a radon in water standard developed under current law or meeting an alternative standard which has a health risk equivalent to the risk associated with outdoor air.

All drinking water systems in a State could meet the alternative standard if the State is implementing a program to reduce exposure to radon in indoor air. Even if a State is not implementing a radon in indoor air program, a drinking water system could comply with the alternative standard by implementing simple steps to reduce radon in indoor air.

This innovative approach to the unique problems posed by radon in drinking water will result in balanced, responsible programs for control of radon in both air and water and will result in prompt action to address this significant health threat.

Many Maine drinking water systems rely on surface water sources. Because of the cold climate and rural character of much of the State, surface water is a clean and reliable source of drinking water throughout Maine.

The 1986 amendments to the Safe Drinking Water Act directed EPA to develop regulations requiring disinfection

and filtration to remove microbiological organisms from surface water.

Many Maine water systems have installed treatment for microbiological contaminants at a substantial cost. The costs of this treatment would have been greater except that the law provided for waivers of filtration requirements in the case of very clean source water. Over a dozen major drinking water systems in Maine qualified for waivers.

The cost of surface water treatment is highest for small systems, especially small noncommunity systems such as campgrounds and summer camps. Many of these small systems will need to comply with the surface water treatment regulations over the next several years.

The bill specifically provides that the EPA is to identify in regulations various filtration technologies which are feasible and affordable for small systems. In addition, while small system variances are not available for these filtration technologies, the State may grant extensions of the compliance periods as needed to allow time for small systems to identify and implement affordable filtration technologies.

In cases where a system cannot afford the small system technology, the exemption provision of the bill provides authority to delay compliance for a limited period until funding under the State loan funds becomes available.

In addition, the bill provides authority for a State to refinance a project already constructed to meet the requirements of the 1986 amendments to the Safe Drinking Water Act. This authority is vital to a State like Maine where many communities have undertaken major projects to comply with new drinking water regulations, such as the surface water treatment rule.

Without this authority, communities which complied with the law in good faith and constructed projects on time without Federal assistance will be at a disadvantage with respect to Federal assistance compared to communities which have been slower to comply.

All the provisions of the bill will help drinking water systems in Maine provide safe water at reasonable cost. The provisions of the bill related to radon, surface water treatment, and funding of past projects respond directly to two of the most difficult drinking water issues in the State in a constructive and balanced manner.

I am pleased to report that the Maine Rural Water Association and the Maine Water Utilities Associations both support the bill.

There are many other important provisions of this legislation. It provides new authority to assure sufficient funding for State management of drinking water programs. It encourages drinking water systems to invest

in protection of drinking water supplies from both ground water and surface water. It streamlines and clarifies enforcement authority and practices. And, it assures that the public will receive timely and understandable notice of violations of drinking water standards and related requirements.

This bill is important for public health and it is important to municipal officials across the country and I urge my colleagues to support it.

Several of the major newspapers in my home State of Maine have recently published editorials in support of the bill reported by the committee and opposing proposals to weaken the act. I ask unanimous consent that these editorials be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.  
(See exhibit 2.)

## EXHIBIT 1

ENVIRONMENTAL PROTECTION AGENCY,  
Washington, DC, April 28, 1994.

Hon. MAX BAUCUS,  
Chairman, Committee on Environment and Public Works, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I want to express my appreciation for your leadership to advance legislation to reform the Safe Drinking Water Act consistent with the Administration's principles. S. 2019 accomplishes our shared goal of improving public health protection while reducing unnecessary regulatory burdens on the nation's water suppliers.

I also would like to commend you for your open and active approach to the negotiations involved in bringing the bill to the Senate floor. This testifies to your commitment to respond directly to the concerns of the Administration and the many organizations that regulate, manage and supply drinking water to the American people.

I am concerned, however, about proposals that could significantly weaken the health protection measures, especially the standard setting provisions, that are fundamental to the Safe Drinking Water Act. The American people expect and deserve the highest quality water in the world when they turn on their faucets for drinking, bathing or cooking. We cannot compromise their trust of their health.

The legislation reported unanimously by the Committee on Environment and Public Works encompasses many of the Administration's recommendations—and many of those advanced by a coalition of state and local organizations—by focusing on the challenges confronting the nation's water suppliers, particularly the small ones. Your bill establishes a new state revolving loan program to fund much-needed infrastructure improvements, it addresses monitoring and compliance schedules, it provides low-cost technology and flexibility for small systems, and it eliminates the current mandate that we regulate a fixed number of contaminants per year regardless of the benefits to public health. These are precisely the types of reforms that will reduce the regulatory and financial burdens on water systems without compromising public health.

I know you share the President's goal of securing a reformed Safe Drinking Water Act during this session of Congress. This goal, however, cannot be accomplished at the expense of public health. As you know, I will continue to work with you and will not hesitate to express my concerns if subsequent

amendments adversely affect the specific drinking water health protection measures essential to the legislation.

Public health protection requires a balance between new flexibility and regulatory reforms on the one side, and appropriate safeguards on the other. These basic safeguards must include new efforts to prevent pollution from entering drinking water sources in the first instance. They also must assure that the nation's water suppliers meet basic tests to reliably deliver high quality water to their customers, including ensuring that the water systems we invest in are economically and administratively viable.

I am confident that with your continued leadership the Senate bill will strike this vital balance. I look forward to continuing to work with you and your colleagues as the legislation proceeds.

Sincerely,

CAROL M. BROWNER.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, OFFICE OF PREVENTION,  
PESTICIDES AND TOXIC SUB-  
STANCES,

Washington, DC, April 29, 1994.

Subject: Proposed Amendments to the Safe Drinking Water Act.

From: Lynn R. Goldman, M.D., Assistant Administrator.

To: Robert Perciasepe, Assistant Administrator for Water.

I have reviewed the language you sent to me and am very concerned about the policy, science and public health issues that it raises.

For the sake of consistency with Administration policy, the public health standard should be one to assure "a reasonable certainty of no harm." For cancer, this is equivalent to a "negligible risk" standard, or a risk of about 1-10<sup>-6</sup>.

The proposed standard in (B)(i)(II) of "health risks \* \* \* not unreasonably increased" from "health risks at a level that is feasible" would be open to a number of interpretations. This standard, coupled with the language in (B)(ii) establishing a determination that is simply not "arbitrary and capricious," would result in a non-science based, non-public health protective standard. Rather, it appears that the goal of this approach is to achieve the least public health protective measure for any given level of feasibility. (For cancer, the EPA would be prohibited from establishing more protective MCL even at equivalent costs!) This proposed standard is not in accord with Administration policy because it would not assure a reasonable certainty of no harm.

The "clarification" section, or proposed colloquy language, is also problematic. The "reference dose" is the Agency's scientists' best determination of a dose that gives a "reasonable certainty of no harm." Moving off the reference dose to higher doses will decrease the certainty of no harm.

Further, the same level of certainty of no harm does not exist within an order of magnitude (or factor of three above or below—for each reference dose. Reference doses have various levels of supporting data. They are for drastically different health effects ranging from acute toxicity to developmental/reproductive effects to chronic effects like neurotoxicity. The level of uncertainty around such estimates would be very much dependent on the uncertainty of the underlying data.

Although the proposed colloquy talks about uncertainty around the reference dose, the proposed statutory language indicates

that the flexibility is around the level that is feasible. This could be a higher level than the reference dose. Depending on the health endpoint of concern, the dose response curve at any point could be very "flat" or very "steep." Agency scientists must apply much scientific judgement in establishing reference doses and levels of certainty around them and other points on the dose response curve. This is a matter for peer review and evolving scientific understanding.

The proposed colloquy appears misleading when it states that the proposed procedures will be equally protective of public health. The proposed procedure will systematically drive allowable doses upward, which may well result in a net reduction in public health protection.

The colloquy will tend to freeze scientific procedures at a given point in time by legislating an issue that should be a matter of scientific judgement, and that will change as our knowledge grows. The appropriate way to develop scientific procedures is through scientific effort, use of best available information and peer review by groups such as the Science Advisory Board (SAB) and National Research Council (NRC), as the Agency has done in the past in developing its reference dose procedure. Most recently, the NRC has released a report that affirms EPA's procedures for cancer and non-cancer effects, while making recommendations for a number of improvements. This is how our procedures should evolve, not by statute.

#### EXHIBIT 2

[From the Bangor Daily News, May 5, 1994]

#### KEEP CLEANING THE WATER

The cancer of water pollution was engendered by our abuse of lakes, streams, rivers and oceans; it has thrived on our half-hearted attempts to control it; and like any other disease, it can kill us.—Sen. Edmund Muskie

A generation after Congress passed substantial measures to protect and improve the nation's waters, it will reconsider the Clean Water Act and the Safe Drinking Water Act amid new pressures not only on the water systems, but on the budgets of those charged with protecting them.

The paradox in the debate over the need to improve water quality is that both sides can point to evidence to support their cases. While as many as half the U.S. waterways have yet to meet the 1972 goal of becoming "fishable and swimmable," municipalities find themselves saddled with water-quality projects that cost tens of millions of dollars but provide only incremental improvements for systems that by most measures are already considered safe.

The Safe Drinking Water Act emerges from the sensible idea that Americans ought to be able to open a spigot and drink a glass of water confident that it will not harm them. The Centers for Disease Control and Prevention, however, offers statistics from as recently as 1992 that show thousands of people each year suffering ill effects from drinking tap water. Now is not the time to weaken safe-drinking-water laws through eliminating the need for public notice of unsafe water systems or by lowering public health standards, as amendments propose to do.

Both acts share with other decrees that fly out of Washington these days the onerous burden of unfunded mandates: costly regulations imposed on state or local governments without the funds to pay for them. Banning these mandates, particularly those that seek to protect the environment, is a popular notion in Washington, but the long-term cost of such a rule would be devastating to the taxpayer.

A law that would require Congress to fully fund all environmental mandates is an invitation to states to reap financial benefit through irresponsible enforcement of environmental laws, knowing that, eventually, the rest of the country would be forced to cover the cost of cleanup. The situation would be akin to the savings-and-loan mess, in which banks that acted recklessly had their excesses covered by government-backed depositors insurance.

A better plan in the Senate would create a revolving-loan program for states to meet the mandates. Such a plan has been proposed for the drinking-water act and would also be useful in meeting clean-water regulations. Fines for noncompliance with other environmental laws should help fund the program.

The Senate is expected to consider the Safe Drinking Water Act this week, and vote on the Clean Water Act sometime later this month. Amendments to the latter could strengthen wetlands protection laws, increase the fines for noncompliance and attempt to reduce nonpoint source pollution, which has become a prime target of environmentalists as more obtrusive sources of pollution have dried up.

As it focuses on the Safe Drinking Water Act, the Senate should view the current act as a successful start to protecting this essential element of life. By giving municipalities flexibility in meeting its goals and creating funding sources for protection that will pay off in the long-term, the nation can maintain the vision that Sen. Muskie and others created more than 20 years ago.

[From the Portland Press Herald]

#### SAFE DRINKING WATER IS CRITICAL TO ALL AMERICA

Senators should hold the line this week against gutting efforts.

It is tragic that just as Americans were preparing to celebrate Earth Day weekend, the environments sunshine friends in Congress were preparing to demolish one of the cornerstones of the environmental movement.

The Safe Drinking Water Act was intended to protect one of Americans' more basic environmental rights—the right to clean, safe drinking water wherever they may live. For more than two decades. It has mostly done that.

In those instances where the act's protections failed, as in the deaths of 104 people and the illnesses of 400,000 more from contaminated water in Milwaukee last year, the need for strengthening the act was clear.

Instead of strengthening the act, however, which would be the proper way to mark Earth Day, some in Congress want to weaken it further. They are responding to complaints about unfunded federal mandates and the costs of enforcement—valid concerns, but ones that hardly should be addressed by relaxing critical health protection standards.

One good provision in the bill that will come to a Senate vote this week, for instance, is creation of a revolving billion-dollar state loan fund. The Clinton administration has proposed other reforms, including a fund to help communities pay for federally mandated improvements. Streamlining EPA enforcement procedures also is possible without gutting the act.

An idea of what's being proposed by the act's critics may be had by their desire to keep water problems secret. They would eliminate the requirement that the public be notified through the media of serious contamination of water supplies, and leave it up

to negotiation between the water industry and the affected states.

Unsafe drinking water is not a theoretical problem; it is here and it is real. "The problem is that millions of people are drinking unsafe, unprotected water," says Jeanne Bassett, New England field coordinator of the U.S. Public Interest Research Group. She cites 1986-92 figures from the Centers for Disease Control that show nearly 35,000 people becoming ill from contaminated water in 33 states, and 133 violations of safe drinking water standards in Maine.

This isn't the time to be weakening those standards. Senators should stand firm against the Domenici-Boren-Hatfield amendments that would do just that, else the title of the "Safe Drinking Water Act" will be a bitter mockery.

Mr. MITCHELL. Madam President, I urge my colleagues to join me in supporting this important legislation.

I thank my colleagues for their courtesy.

Mr. JOHNSTON and Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Madam President, will the majority leader yield? Do I understand we are not having votes until after 3 o'clock?

Mr. MITCHELL. Madam President, that is correct.

Mr. BAUCUS and Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, I wish to thank the majority leader for his statement. He has been a very strong supporter of environmental issues generally—strong, progressive, balanced environmental legislation, in particular a very strong supporter of the Safe Drinking Water Act. He is a member of the committee and given very valuable assistance on the committee. He has helped very much with respect to scheduling and timing to assure that we not only get the bill up for consideration at the appropriate time but in a good, strong, solid fashion so that agreements can be worked out to better enhance the passage of a good, strong Safe Drinking Water Act.

I very much thank the majority leader for his very fine leadership on this issue.

Mr. MITCHELL. Madam President, I am grateful to my colleague for his kind remarks, but every Member of the Senate knows that the person who has really done the work on this bill has been Senator BAUCUS, along with Senator CHAFEE. I am honored to serve on the committee under his leadership, and I think it is a good bill, the result of a lot of time and effort, and I hope very much that we can pass it with a very large majority today.

Mr. JOHNSTON addressed the Chair. The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Madam President, I move to temporarily lay aside the pending amendment.

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

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Madam President, I understand the Senator from California wanted to proceed with an amendment.

If I could ask the distinguished manager of the bill, it is my understanding, Madam President, that the Senator from California had an amendment which was going to be accepted.

Mr. BAUCUS. That is correct.

Mr. KERRY. I would like to ask unanimous consent that the Senator from California be permitted to proceed with her amendment; after the acceptance of that amendment, I be permitted to proceed as if in morning business for a period of time.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Reserving the right to object, can the Senator give us a sense of how long he wishes to speak?

Mr. KERRY. I honestly do not know what the full time is going to be but it is not—

Mr. BAUCUS. Will the Senator agree to 10 minutes?

Mr. KERRY. I cannot do it in 10 minutes.

Mr. BAUCUS. Madam President, the problem is we have 40 to 50 amendments that could be offered and under the consent agreement each of those amendments must be offered by 3 o'clock today.

Mr. KERRY. I understand that.

Mr. BAUCUS. We are on the Safe Drinking Water Act, and I just think in comity to other Senators, in deference to other Senators, we should be sure we have as much time as possible so they can offer their amendments before 3 o'clock today. So if the Senator could agree to limit his remarks, I think that therefore we would be in a good position to accommodate other Senators.

Mr. KERRY. Let me just say to my friend, I was in the very position he is in with the Senator from New York not long ago. I understand it. The Senator from New Jersey, the Senator from Montana, and others have spoken on the subject earlier and because of the timeframe of the special session I was unable to get in at that point in time. I wanted to be able to have the commensurate amount of time they had off the bill on this very subject.

Mr. BAUCUS. Madam President, again reserving the right to object, it is true that the Senator from New Jersey spoke on this as in morning business. But that was at a time during morning business where no amendments were pending, and when I was imploring Senators to come to the floor to offer amendments. We are now in a different posture. We now have two amendments pending and potentially a third one which we will accept. And the

Senator from New York wishes to speak. We do not have a lot of time left. We are in a different timeframe.

I want to accommodate the Senator. But if he could give us an assurance to cut his remarks down to, let us say, at the outset 15 minutes. Otherwise, I am afraid I would be constrained to object.

Mr. KERRY. Madam President, as the Senator well knows, this is a subject that is difficult to explain in that period of time.

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

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

Mr. KERRY. Madam President, it is my understanding that the manager has a couple of people who wanted to proceed with amendments immediately. I will not stand in the way of that, particularly since I think they are agreed on.

I ask unanimous consent that at least after their amendments and we have a chance to come back to revisit where we are in time if I could have the floor in order to do that without again trying to disrupt the process.

Mr. BAUCUS. Madam President, again, I think in fairness to other Senators, we need an indication of the limit of time.

Mr. KERRY. Right; but I would like to see where we are at that point in time, if I could have the right to come back to make a decision as to where we are. That is all I am asking.

Mr. BAUCUS. Madam President, we are getting kind of tied up here in a parliamentary knot. I suggest to the Senator from Massachusetts that we proceed, and temporarily set the two amendments by the Senator from Louisiana aside; that we go to the amendment of the Senator from California, and I think the Senator from New York has a small matter he wishes to dispense with. I give assurance to the Senator from Massachusetts that during the interim I will try to work out an accommodation with the Senator, and certainly I would not be constrained to not let him seek the floor. I think during that time we can work it out.

Mr. CHAFEE. Madam President, I think that the Senator from Louisiana is going to be ready to go with his amendment. As I understand, we can take the risk assessment amendment after the two amendments that are going to be accepted.

Mr. JOHNSTON. Yes. I would like to go ahead and get the risk assessment done. I understand it is agreed upon.

Mr. CHAFEE. It is agreed upon to have a time limit.

Mr. JOHNSTON. Yes.

Mr. BAUCUS. Madam President, I suggest regular order.

Mrs. BOXER addressed the Chair.  
The PRESIDING OFFICER. The Senator from California.

## AMENDMENT NO. 1723

Mrs. BOXER. Madam President, I send an amendment to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself and Mr. BRADLEY, proposes an amendment numbered 1723.

Mrs. BOXER. Madam 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 86, line 20, insert after paragraph (B) the following new subsection:

"(F) WATER WELL PUMPS AND WATER WELL SYSTEM COMPONENT PARTS.—

(1) The Administrator shall, within one year from the date of enactment, complete a report reviewing data and information on the leaching of lead from water well pumps and water well system component parts (not to include above-ground pipes, pipe fittings and fixtures specified under subsection (e)) that come into contact with drinking water and the adequacy of voluntary consensus standards for protecting the health of persons from the leaching of lead. In conducting a review under this paragraph, the Administrator shall identify the potential health risks to children and other vulnerable subpopulations associated with water well pumps and water well system component parts.

(2) Not later than two years after the date of enactment of this paragraph, if the Administrator determines that a voluntary consensus standard is not effectively protecting the health of persons, then the Administrator shall establish a health-effects based performance standard and testing protocol for the maximum leaching of lead from water well pumps and water well system components parts (not to include above-ground pipes, pipe fittings and fixtures specified under subsection (e)) in water well systems that come into contact with drinking water.

(3) It shall be a violation of this Act to import, manufacture, sell, distribute or install a water well pump or water well system component parts (not to include above-ground pipes, pipe fittings and fixtures specified in subsection (e)) that leach lead above the maximum level identified in the standard established by the Administrator under paragraph (2)."

(4) Not later than 180 days after the date of enactment of this subsection, the Administrator shall request information as is reasonably required to assist the Administrator in carrying out the requirements of this subsection."

On page 86, line 21, strike "(f)" and insert "(g)" in lieu thereof.

Mrs. BOXER. Madam President, I am very pleased to offer this amendment. I really want to thank the chairman and the ranking member for their assistance.

Madam President, I rise to offer an amendment that addresses the serious health threat posed by lead leaching from water well pumps and well system component parts.

My amendment would require EPA to establish, within 2 years, an enforceable, health-based standard for lead leaching from water well pumps and component parts, unless the Administrator determines that a voluntary standard is effectively protecting public health.

The standard would be set based on a review and report, required by the amendment, regarding the leaching of lead from well pumps and other component parts in well water systems that come into contact with drinking water.

The report would also examine the adequacy of voluntary standards for protecting the health of persons from the leaching of lead and identify the potential health risks to children and other vulnerable subpopulations associated with well pumps and component parts.

The amendment was drafted with significant input from the pump manufacturers and with the assistance of Senators REID, CHAFFEE, BUMPER, and PRYOR. I would like to thank those Senators and their staffs for their valuable help.

Submersible ground water pumps are used to raise ground water to the surface. They are immersed at the bottom of a well and often include brass and bronze parts. The National Ground Water Association estimates that submersible well pumps are used in about half of the private wells in the United States and that about 450,000 new submersible pumps were sold in 1993. Census data also indicate that 11.8 million homes in the United States and over 30 million Americans are served by private wells.

The California attorney general and several private organizations recently documented seriously high levels of lead leaching from submersible drinking water well pumps made with brass or bronze parts. The problem with such pumps is most acute when they are new. In their first 10 days of use, they can leach over 1,300 parts per billion of lead, over 100 times the level EPA considers safe. The levels of lead leached from these pumps drop with time, but can still average 245 parts per billion after 21 to 30 days. EPA drinking water standards prohibit lead in drinking water at levels above 15 parts per billion. EPA has set a maximum contaminant level goal of zero parts per billion.

The EPA has responded to the California findings by taking the unusual step of recommending that private well owners with submersible pumps have their drinking water tested for lead. In the short term EPA recommended that people with brass or bronze pumps less than a year old should drink bottled water until they get their test results.

Lead leaching submersible pumps pose a real threat, particularly to our children. Lead affects children's nervous systems, IQ levels, behavior, and attention span, even at extremely low

levels. A recent study by researchers at the University of North Carolina indicates that the lead from these pumps, leaching at up to 100 times EPA's action level of 15 parts per billion, could "cause relatively severe neurologic damage if ingested."

Lead is particularly damaging to unborn babies who can ingest lead when their mothers are exposed.

Lead also endangers adults by increasing blood pressure. And if these dangers were not enough, lead stays in our bodies, accumulating with each exposure.

So we must look seriously at eliminating any source of lead contamination. This is never more true than when the contamination comes in the water we must drink every day of our lives.

Some may argue that this amendment will unjustifiably restrict the use of ground water pumps. But such arguments ignore the fact that alternatives to lead-containing pumps are readily available. Indeed, the best selling water pump in the State of California has no lead in it.

In California, proposition 65 forbids these pumps from leaching excessive lead levels into drinking water. The California attorney general, along with several environmental and public health groups have sued pump manufacturers whose pumps leach lead. But California's action will only protect Californians.

There is no provision in Federal law to reduce lead leaching from pumps, and voluntary measures have not been sufficient to assure safe lead levels in drinking water from these pumps in the rest of the Nation.

The amendment I propose would simply direct EPA to establish a health-based lead leaching test for ground water pumps. These tests would assure that pumps do not leach lead into drinking water at levels that would threaten the health of children, adults, or women of childbearing age.

With cost effective alternatives readily available, there is no reason, no reason at all, for these pumps to continue as a source of lead contamination.

I therefore urge my colleagues to agree to this amendment.

I again want to thank my colleagues so very much on both sides of the aisle for working with us over these last several weeks to come to an agreement. I am very proud of this amendment. I think it strengthens this bill. I strongly support it. And I am very pleased that my colleagues appear to be willing to accept this amendment at this time.

Mr. CHAFFEE addressed the Chair.  
The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 1724 TO AMENDMENT NO. 1723  
(Purpose: To require the Administrator to prepare a report on the health risks from submersible well pumps)

Mr. CHAFFEE. Madam President, I send to the desk a second-degree

amendment to the amendment of the Senator from California. This is an amendment that she has approved of, and has been approved on her side and the other side. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows: The Senator from Rhode Island [Mr. CHAFEE], for Mr. JEFFORDS, proposes an amendment numbered 1724 to amendment numbered 1723.

Mr. CHAFEE. Madam 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:

In the subsection (f) proposed to be inserted, strike the quotation marks at the end and insert the following new paragraph:

“(5) REPORT ON LEAKING OIL FROM SUBMERSIBLE WELL PUMPS.—

“(A) STUDY.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall complete a study that—

“(i) reviews data and information on the leaking of oil, including nonfood grade oil and food grade oil, and polychlorinated biphenyls from well pumps that come into contact with drinking water in private wells and wells in public water systems; and

“(ii) identifies potential health risks from the leaking oil and polychlorinated biphenyls in wells.

“(B) REPORT.—Not later than 18 months after the date of enactment of this subsection, the Administrator shall publish a report, to be provided to the environmental agency of each State for distribution to the public, that—

“(i) identifies each pump that presents a health risk referred to in subparagraph (A), including the manufacturer and model number of the pump; and

“(ii) provides recommendations on presentations to be taken to avoid the risk, such as the replacement of the pump, cleaning of the well and plumbing system in which the pump is located, and testing of the well after the removal of the pump.

Mr. CHAFEE. Madam President, this amendment asks the EPA to investigate the health risks associated with leaking oil and PCBs from submersible pumps, and identify those pumps which are most likely to fail.

The EPA is then instructed to produce a report to be provided to the public discussing the health risks, listing those pumps which may fail, and advising the public on measures to be taken to avoid these health risks. Private well owners deserve safe, potable water. This amendment will allow us to educate and protect those private wellowners whose wells contain pumps that risk leaking.

Mr. JEFFORDS. Madam President, I would like to commend the chairman and ranking member of the Environment and Public Works Committee for their commitment to safe drinking water and their tireless dedication to completing action on this measure. I would also like to thank Senator BOXER and her staff for their assistance on this amendment.

The amendment I offer today asks the EPA Administrator to conduct a study on the leaking of oil and PCB's from submersible well pumps in order to identify the health risks associated with damaged or faulty pumps and produce a report listing those pumps causing such health risks and providing recommendations on actions to be taken to avoid this risk.

I recognize that the Safe Drinking Water Act does not specifically regulate or provide assistance to owners of private wells. However, I feel strongly that there are certain instances where private well owners deserve to be protected against adverse health affects from contaminated water. A perfect example is the recent report that well pumps and their component parts are leaching lead into drinking water. Simultaneously, some submersible pumps can also leak oil and PCBs into well water. The Wisconsin Department of Natural Resources has prepared and distributed a health advisory regarding the risks these submersible pumps pose. The State of Vermont will shortly complete a similar advisory to assist well owners in understanding and responding to questions about oils and PCBs in submersible pump motors.

A resident of my home State of Vermont, Craig Stead, of Putney, brought this issue to my attention after he and his family suffered health problems related to contamination of their well water from oil containing PCBs which leaked out of their submersible well pump. In hopes that other families would not face similar adverse health effects, Mr. Stead has been actively working with our State environmental agency, and with my staff, to develop materials which would inform other private well owners of the potential risks they may face from leaking submersible well pumps.

Newer submersible well pump motors are generally filled with a water/propylene glycol mixture, for which leakage presents no concern. Some older submersible pump motors however, were filled with oil, and some fraction of these may also contain PCB's. Leakage of these contaminants may cause a health risk to consumers. Although only a fraction of submersible pump motors may fail in such a way as to leak their contents into well water, when it does happen it can be very costly to fix. Often a well owner must replace the pump, flush out the well and continue to monitor the well to assure that the contaminants have been removed.

This amendment asks that the EPA investigate the health risks associated with leaking oil and PCB's from submersible pumps and identify those pumps which are most likely to fail. The EPA is then instructed to produce a report, to be provided to the public, discussing the health risks, listing those pumps which may fail and advis-

ing the public on measures to be taken to avoid these health risks.

Madam President, private well owners deserve safe potable water. This amendment will allow us to educate and protect those private well owners whose wells contain pumps that risk leaking. I would like to thank the Vermont Department of Health, the Vermont Attorney General's Office for their assistance on this matter. In addition, I would like to thank Craig Stead for this devotion to providing safe drinking water.

I thank the managers of this bill for accepting this amendment and look forward to working with them to pass this important measure.

Mr. BAUCUS. Madam President, these are two good amendments. First is the amendment offered by the Senator from California, which is to direct the EPA Administrator to develop regulations to protect against leaching from submersible pumps. It is a problem across the country and particularly in California. It must be addressed.

The second-degree amendment offered by the Senator from Rhode Island on behalf of the Senator from Vermont goes a step further. It is an improvement, and it requires a study so we can get a better sense to even do a better job in addressing leaching from submersible pumps that gets into the ground water systems.

I urge the Senate to adopt both amendments.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1724 to amendment No. 1723.

The amendment (No. 1724) was agreed to.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 1723, as amended.

The amendment (No. 1723), as amended, was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote.

Mrs. BOXER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana, Mr. BAUCUS, is recognized.

Mr. BAUCUS. Madam President, I ask unanimous consent that the vote on Senator JOHNSTON's amendment No. 1720 occur, without any intervening action or debate, at 3:45 p.m. and that no second-degree amendments be in order to that amendment.

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

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana [Mr. JOHNSTON], is recognized.

Mr. JOHNSTON. Madam President, what is the regular order?

The PRESIDING OFFICER. Amendment No. 1722 by the Senator from Louisiana.

Mr. JOHNSTON. On risk assessment?

The PRESIDING OFFICER. That is correct.

Mr. JOHNSTON. Madam President, did I understand that the Senator from New York just wanted 2 minutes?

Mr. D'AMATO. Yes.

Mr. JOHNSTON. I ask unanimous consent to lay aside the pending amendment for 2 minutes.

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

Mr. D'AMATO. I thank my distinguished colleague from Louisiana.

AMENDMENT NO. 1725

(Purpose: To require a screening program to test certain substances to determine whether the substances may have effects in humans similar to the effects produced by naturally occurring estrogens, or other endocrine effects)

Mr. D'AMATO. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. D'AMATO], for himself, Mr. MOYNIHAN, Mr. JEFFORDS, Mr. LEAHY, Mr. LEVIN, and Mr. CHAFEE, proposes an amendment numbered 1725.

Mr. D'AMATO. Madam 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 143, after line 23, add the following new subsection:

(i) ESTROGENIC SUBSTANCES SCREENING PROGRAM.—Section 1442 (42 U.S.C. 300j-1) (as amended by section 11(a)(10)) is further amended by adding at the end the following new subsection:

“(j) SCREENING PROGRAM.—

“(1) DEVELOPMENT.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall develop a screening program, using appropriate validated test systems, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.

“(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this subsection, after obtaining review of the screening program described in paragraph (1) by the scientific advisory panel established under section 25(d) of the Act of June 25, 1947 (chapter 125), and the Science Advisory Board established by section 8 of the Environmental Research, Development, and Demonstration Act of 1978 (42 U.S.C. 4365), the Administrator shall implement the program.

“(3) SUBSTANCES.—In carrying out the screening program described in paragraph (1), the Administrator shall provide for the testing of all active and inert ingredients used in products described in section 103(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603(e)), and may provide for the testing of any other substance if the Adminis-

trator determines that a widespread population may be exposed to the substance.

“(4) EXEMPTION.—Notwithstanding paragraph (3), the Administrator may, by regulation, exempt from the requirements of this subsection a biologic substance or other substance if the Administrator determines that the substance does not have any effect in humans similar to an effect produced by a naturally occurring estrogen.

“(5) COLLECTION OF INFORMATION.—

“(A) IN GENERAL.—The Administrator shall issue an order to a person that manufactures a substance for which testing is required under this subsection to conduct testing in accordance with the screening program described in paragraph (1), and submit information obtained from the testing to the Administrator, within a time period that the Administrator determines is sufficient for the generation of the information.

“(B) FAILURE TO SUBMIT INFORMATION.—

“(i) SUSPENSION.—If a person referred to in subparagraph (A) fails to submit the information required under such subparagraph within the time period established by the order, the Administrator shall issue a notice of intent to suspend the sale or distribution of the substance by the person. Any suspension proposed under this subparagraph shall become final at the end of the 30-day period beginning on the date that the person receives the notice of intent to suspend, unless during that period a person adversely affected by the notice requests a hearing or the Administrator determines that the person referred to in subparagraph (A) has complied fully with this paragraph.

“(ii) HEARING.—If a person requests a hearing under clause (i), the hearing shall be conducted in accordance with section 554 of title 5, United States Code. The only matter for resolution at the hearing shall be whether the person has failed to submit information required under this paragraph. A decision by the Administrator after completion of a hearing shall be considered to be a final agency action.

“(iii) TERMINATION OF SUSPENSIONS.—The Administrator shall terminate a suspension under this subparagraph issued with respect to a person if the Administrator determines that the person has complied fully with this paragraph.

“(6) AGENCY ACTION.—In the case of any substance that is found to have a potential adverse effect on humans as a result of testing and evaluation under this subsection, the Administrator shall take such action, including appropriate regulatory action by rule or by order under statutory authority available to the Administrator, as is necessary to ensure the protection of public health.

“(7) REPORT TO CONGRESS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall prepare and submit to Congress a report containing—

“(A) the findings of the Administrator resulting from the screening program described in paragraph (1);

“(B) recommendations for further testing and research needed to evaluate the impact on human health of the substances tested under the screening program; and

“(C) recommendations for any further actions (including any action described in paragraph (6)) that the Administrator determines are appropriate based on the findings.”

Mr. D'AMATO. Madam President, this amendment will require the EPA to gather information that may prove essential in the war against breast can-

cer. Specifically, this amendment will require the EPA to develop and implement a testing program to identify pesticides and other chemicals that can cause estrogenic and other biological effects in humans, and to report their findings to Congress within 4 years.

This amendment is critical in view of growing evidence linking environmental chemicals that are capable of mimicking or blocking the action of the hormone estrogen to a host of developmental and reproductive abnormalities in wildlife and humans. The most alarming findings suggest a link between exposure to these chemicals and the dramatic increase in human breast cancer that has become so tragically apparent in our Nation over the past several decades.

In 1960, the chances of a woman developing breast cancer were 1 in 14. Today, they are one in eight. This year alone, breast cancer will strike an estimated 182,000 American women, and will take the lives of over 46,000. It has become the most common female cancer and the leading cause of death among American women between the ages of 35 and 54.

For years, researchers have understood that breast cancer is influenced by how much estrogen a woman produces. If you take the existing known risk factors—including early puberty, late menopause, delayed childbearing, or having no children at all—they have one thing in common: they all contribute to a high lifetime exposure to estrogen. There is clear evidence that the more estrogen a woman is exposed to in her lifetime, the higher her risk of developing breast cancer.

Recently, scientists have been taking a close look at the relation between so-called xeno-estrogens and increased breast cancer risk. It is theorized that these estrogenic materials—which include pesticides and other chemicals capable of affecting the internal production of the hormone estrogen—may hold the key to explaining some of the 70 percent of all breast cancer cases not associated with any of the existing known risk factors.

The research is compelling.

Perhaps the most startling findings are those of Dr. Mary Wolff of Mt. Sinai Medical Center, whose research involved the estrogenic chemicals PCB and DDE, which is a breakdown product of the pesticide DDT. Dr. Wolff tested the blood of 58 women with breast cancer and compared it to that of 171 women who were cancer-free, taking pains to ensure that the women were identical when it came to age, childbearing history, and every other characteristic known to influence breast cancer risk. She found that the women who had developed breast cancer had PCB levels in their blood that were 15 percent higher than the cancer-free women, and DDE levels that were 35 percent higher. She also discovered

that as the level of DDE increased, so did the risk of developing breast cancer—to the extent that the women with the highest DDE levels were four times as likely to get breast cancer as those with the lowest levels.

A subsequent study by Canadian researchers, published on February 2 in the *Journal of the National Cancer Institute*, found a further link between DDE levels in breast tissue and the development of breast cancer. In this case, higher DDE levels were associated with a higher risk for a particular-type of breast cancer which feeds on estrogen—a type of breast cancer which, according to researchers, has made up a larger and larger portion of the increase in breast cancer in recent years. In the words of the study's authors, "this study supports the hypothesis that exposure to estrogenic organochlorine may affect the incidence of hormone-responsive breast cancer."

The women of Long Island, NY have long suspected a connection between the region's unusually high breast cancer rates and the exceptional concentrations of DDT and other potentially estrogenic pesticides that were once applied in an effort to rid former potato fields of a parasite known as the golden nematode.

Women who have grown up and raised families in residential subdivisions that were built on top of these abandoned potato fields have good reasons to be suspicious. Not least of these is the recent finding that if you are a woman and you have lived in Nassau County for more than 40 years, your risk of getting breast cancer is 72 percent greater than a woman of the same age who have lived in the county for less than 20 years.

The National Cancer Institute is now in the process of further examining the connection between breast cancer and xeno-estrogens as part of a comprehensive study into the causes of Long Island's high breast cancer rates. Their findings—expected within the next 5 years—will contribute greatly to our knowledge base about this important issue.

As we wait for the results of this and other studies, it is vital that we begin to systematically identify those pesticides and other compounds present in the environment that possess estrogenic properties. We must do this so we will be ready, should further research confirm a clear link between these substances and breast cancer, to take appropriate steps to protect the public.

This amendment will give us some of the information needed to begin taking these steps should they become necessary.

The amendment would require the EPA to utilize appropriate, scientifically validated test systems as part of a screening program to identify pesticides and other substances capable of

altering estrogenic activity in the human body.

Several quick and inexpensive test systems have been developed in recent years which could potentially be utilized in such a screening program. Examples include tests developed by Dr. Ana M. Soto of Tufts University School of Medicine in Boston and Dr. Leon Bradlow of the Strang-Cornell Cancer Research Laboratory in New York, as well as a third test utilizing state-of-the-art biotechnology techniques described recently in *Environmental Health Perspectives* by Dr. John McLachlan of the National Institute of Environmental Health Sciences.

Because these tests are simple, inexpensive and quick, they are well suited for the kind of large-scale screening needed to identify potentially hazardous estrogenic compounds. Since reproduction requires complex interactions between hormones and cells in the intact body, the tests are not intended to replace existing animal testing models, but to complement them by quickly flagging suspect compounds which can then be targeted for additional testing or public health approaches.

Given the availability of these new techniques, I was shocked when I learned last September that the EPA does not routinely screen pesticides for estrogenicity. I raised this concern in testimony before a joint hearing of House Subcommittee on Health and the Environment and the Senate Committee on Labor and Human Resources on September 21, 1993. In my testimony I called for a much more aggressive EPA response to the evidence which has been put forward linking estrogenic chemicals and breast cancer.

The EPA has now become more interested in this area—for which I commend and encourage them. But I would like to encourage them further by requiring them to undertake the kind of widespread screening program that our Nation's breast cancer epidemic demands, utilizing appropriate, scientifically validated testing techniques, coupled with a research program to understand the health risks associated with exposure to xeno-estrogens.

This amendment would ensure that such a program is underway within 1 year, and would give the EPA Administrator a deadline of 2 years to implement a peer-reviewed plan, with a report to Congress due in 4 years detailing the program's findings and any recommendations for further action the Administrator deems appropriate.

Madam President, we simply cannot afford to wait until we have a smoking gun before we act to identify those chemicals in the environment that are estrogenic. Breast cancer is claiming the lives of women in this country at a rate of 1 death every 11 minutes. It would be unconscionable not to arm ourselves with crucial knowledge about chemicals that may be contributing to

this scourge so that we can rapidly implement appropriate public health measures when scientific research indicates they are warranted.

Madam President, this is an urgent matter. Let us not wait until it's too late to take this small step to help save the lives of American women. I urge the adoption of the amendment.

Mr. MOYNIHAN. Madam President, I congratulate the Senator from New York for his leadership on this amendment that seeks ways to identify pesticides and other chemical substances that may lead to breast cancer and other effects. I am pleased to have worked with him on the language and I wish to be an original sponsor of the amendment.

Breast cancer is a terrible disease of great concern to women all over America and especially to the women of Long Island. Dr. Mary Wolff of the Mount Sinai Hospital in New York City studied a population of Long Island women and reported, just last month in the *Journal of the National Cancer Institute*, that breast cancer was four times more common among women with the highest blood levels of DDE. DDE is a breakdown product of the pesticide DDT, a pesticide that was banned 20 years ago. It seems that DDT may be exacting a delayed toll.

We are coming to learn that certain environmental pollutants mimic naturally occurring hormones and that they may contribute to reproductive failure, breast cancer, and other diseases. If true the consequences of inaction are too terrible to contemplate. Mr. President, there is no doubt but that we need to begin to identify those chemicals that cause such effects and we need to take responsible action to make sure they cause no harm.

This will not be easy. The presence or absence of a link between estrogenic pollutants, such as pesticides, and breast cancer is not clear. Just 1 week after Dr. Wolff's findings were published, Dr. Nancy Krieger of the Kaiser Foundation Research Institute in Oakland, CA, reported an epidemiological study that found no link between DDE and breast cancer. Such is the nature of environmental science. The scientific community warns us that a single positive epidemiology study is not a conclusive finding, and that positive results from laboratory screening studies do not prove harm in humans.

But then the lack of clear-cut links between cause and effects should not daunt us. Regulatory decisions aren't clean. Look at the Safe Drinking Water Act [SDWA]. The degree of regulation that looked good in 1986 seems too costly today. In 1985 we felt there was a strong scientific basis for setting allowable amounts of contaminants, referred to as the maximum contaminant levels [MCL's]. Today we are coming to understand MCL's are based as much on policy as on science.

This dawning realization coupled with protests from State and local officials over the costs of complying with the 1986 act causes the Senate to pause. Clearly, protection of public health is our primary goal. But does our current law go beyond protection of human health? Do we really need to spend so much to insure the public welfare? These concerns led me to offer language, accepted during the Environment and Public Works Committee markup of the bill for research to learn more about the biological basis of the effects caused by drinking water contaminants and for developing and applying tools and techniques to assess costs, risks, and priorities. Both recognize the need to make decisions now, based on the currently available knowledge, but both emphasize the need to improve our capacity to make decisions in the future.

The pending amendment takes the same approach. It uses current technology to screen the chemicals found in pesticide products to identify those that mimic estrogen and other hormones, providing a basis for selecting that subset that warrants further study. We simply cannot do everything at once so we must set priorities.

As a next step our intent is that EPA work with expert scientists to identify how best to further characterize priority chemicals and report to Congress about what criteria they used to set priorities, what chemicals they recommend for further study, and what needs to be done to develop dose response relationships for these substances so that plausible biologically based risk assessment models can be developed for use by EPA and others.

Madam President, this is a realistic and honest approach. It will not resolve all uncertainty; nothing ever can or will. In fact, many questions will remain, but it will help inform managers as they grapple with the factors that must be considered in deciding what to do about estrogens in the environment. I thank the managers for agreeing to accept this amendment.

Madam President, would the Senator from New York yield for some questions regarding this amendment?

Mr. D'AMATO. Certainly.

Mr. MOYNIHAN. Given the concerns that reproductive effects in wildlife may be linked to endocrine disruption, for instance decline in fertility of Beluga whales in the Saint Lawrence Seaway, some are concerned that the amendment is too limited because it focuses on human breast cancer. Does the amendment take a position on this issue?

Mr. D'AMATO. I recognize the concern that environmental estrogens and other hormone mimics may cause significant effects on nonhuman species. However, the top priority of this amendment is to learn more about substances that may lead to breast and

other related forms of cancer in humans. It is silent about the possibility that effects may occur in other species and leaves that judgment to the Administrator.

Mr. MOYNIHAN. I have heard concerns raised about other endocrine and immune system impairments too. Does the discretion provided the Administrator under this amendment extend to health effects other than breast cancer?

Mr. D'AMATO. Yes. For example, if the Administrator so chose she could include screening for male reproductive effects, effects to the immune system, and so forth.

Would the Senator address a question about the scope of the amendment?

Mr. MOYNIHAN. Certainly.

Mr. D'AMATO. When the results of the screening study become available, subsection j(6) directs the Administrator to " \* \* \* take such action, including appropriate regulatory action by rule or by order under statutory authority available to the Administrator, as is necessary to ensure the protection of public health." Is the intent that the Administrator regulate all substances found positive in the study under the amendment?

Mr. MOYNIHAN. No. The testing called for in the amendment is a screening study to identify active and inert pesticide ingredients that mimic estrogens. It is a hazard identification process designed to identify the magnitude of the potential problem and to help set priorities for the future. As we learned from the experience with the Ames test for carcinogens in the 1970's and 1980's, hazard identification tests do not provide enough information to be the sole basis for regulatory action. Having said that, let me quickly note that the Administrator may have additional information about the exposure levels, or about the relationship between exposure and effect for certain of the substances to be tested such that she makes a risk management decision that regulatory action is needed. If, as a result of such evaluations, the Administrator finds a substance likely has a potential adverse effect in humans she must take appropriate regulatory action. The amendment gives her authority to do so through appropriate regulatory action under the Federal Insecticide, Fungicide and Rodenticide Act or the Toxic Substances Control Act or under other authority available to the Administrator.

Mr. D'AMATO. What happens once the screening study called for in this amendment is completed.

Mr. MOYNIHAN. The screening study will identify certain pesticide ingredients that mimic estrogens and perhaps other hormones. Consequently, people will be concerned, some very concerned about their health. It is important to be realistic, honest and responsible throughout the design and conduct of

this study so that we do not create undue apprehension, but it is also important to inform the public and to take action where significant hazards are identified.

Mr. D'AMATO. The Senator raises something that I feel very strongly about. Frankly, I am extremely worried about the health impacts associated with exposure to pesticides, and I am deeply concerned that they may lead to diseases such as breast cancer. At the same time I think that the women of Long Island and elsewhere have suffered enough anguish, and I do not want to scare people unnecessarily.

Mr. MOYNIHAN. The Senator raises an extremely important issue—how best to determine whether pesticides, a widespread class of environmental contaminants, pose a potential risk without creating panic in the population by which they will carry out this amendment. An important part of this process should be a risk communication strategy to identify the likely outcomes, to keep the public informed and aware of the purpose of the study, including its strengths and limitations. It is important not to over promise and raise false expectations.

Mr. D'AMATO. Would the Senator like to comment on why the amendment requires that the testing requirements and communication strategies by reviewed by the Science Advisory Panel and Science Advisory Board, and any other review group the Administrator deems appropriate, before finalizing the requirements.

Mr. MOYNIHAN. Yes, certainly. It is because we are just coming to learn that certain environmental pollutants mimic naturally occurring hormones and that they may contribute to breast cancer, reproductive failure, and other diseases. There is no consensus about the magnitude and nature of the problem, and so it will be controversial, with those on opposite sides of the issue voicing strong opinions. It is our intent that the EPA be as responsible and credible as it can be. This means that the Administrator should work with expert scientists from government, academia, industry and the public health sector to select criteria for what constitutes a validated test, to select the set of validated tests to be used, and to design the protocols for study. She may wish to engage organizations, such as the National Academy of Sciences or the American Society for Testing and Materials, and so forth for assistance.

Similarly, when the study is completed, the report to Congress required under subsection j(7) should reflect guidance from the scientific community, summarizing the findings of the screening study, and recommending followup actions, as necessary.

Mr. D'AMATO. Could the Senator discuss the potential followup actions that might be recommended?

Mr. MOYNIHAN. Obviously, that depends on the outcome of the screening program. If only a few substances screen positive, the followup might include conducting more detailed tests on each substance that tests positive; if a number are positive, however, priorities must be set to identify those chemicals of greatest concern for which does-response relationships are needed. Though we may wish it were not so, we simply cannot do everything at once.

The criteria for setting priorities may well be to select those chemicals found most often in the environment and in the highest concentrations, those that are most active or that bioaccumulate, those for which there are testable hypotheses for action, and those which are representative of specific categories of chemicals. The goal is to develop plausible biologically-based risk assessment models for use by EPA and others to inform their risk management decisions.

Mr. D'AMATO. Does the Senator know just what studies will likely need to be conducted and how much they will cost?

Mr. MOYNIHAN. The amendment is silent on exactly what additional studies to require after the screening study because we want to benefit from the screening results and from EPA's guidance before deciding what, if anything, to do next. The determination about how much science is needed before making a regulatory decision is a policy call. There will never be enough information to unambiguously answer every question about environmental safety. When the EPA makes its report to Congress it would be appropriate to examine just how much science is recommended by EPA to resolve this issue, how much additional research or action beyond that initiated by EPA would cost, and how much Congress thinks is appropriate to pay.

Mr. LEAHY. Madam President, I am pleased to cosponsor Senator D'AMATO's amendment. Recent studies indicate that some pesticides imitate human hormones, particularly estrogen, and that such estrogen-imitating compounds may be linked to breast cancer and disruptions in the human endocrine system. Pesticides are found in drinking water.

We cannot afford to overlook these studies linking breast cancer and pesticides. Breast cancer has reached epidemic levels. In 1994 alone, 182,000 women will be diagnosed with breast cancer and 46,000 will die of it. This epidemic greatly concerns Vermonters because our State's breast cancer mortality rate is higher than most other parts of the country.

Since the 1940's, both the incidence of breast cancer and the use of pesticides have increased dramatically. We must determine what exactly the link between these developments may be.

Last November, I wrote to the Environmental Protection Agency to urge it to accelerate the development of a plan to test pesticides that may have estrogenic or other endocrine-disrupting properties. This amendment helps ensure the plan will be implemented.

I appreciate the clarifications that Senators MOYNIHAN and D'AMATO have made about the scope of their amendment. My office received some calls expressing concerns about its scope, and I thank the Senators from New York for their assistance in responding to these concerns.

Mr. BAUCUS. Madam President, the committee has worked with the Senator from New York, as well as with his colleague from New York. This is a very commendable, good amendment. I think it addresses a potential public health threat. We urge its adoption.

Mr. CHAFEE. Madam President, this side, too, thinks it is a good amendment. I would like to be added as a cosponsor with the approval of the Senator from New York.

Mr. D'AMATO. I would be delighted. The PRESIDING OFFICER. The question is on agreeing to amendment No. 1725.

The amendment (No. 1725) was agreed to.

Mr. D'AMATO. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

#### AMENDMENT NO. 1720

Mr. JOHNSTON. Madam President, the pending amendment is one on risk assessment. I am very pleased to tell my colleagues that the Senator from Montana and I have come to an agreement. The Senator from Rhode Island, I understand, is not yet agreeable, but the Senator from Montana and I are in agreement, as is the Senator from New York [Mr. MOYNIHAN].

Madam President, the Senate will recall that as part of the EPA elevation bill, we considered and passed my risk assessment amendment by a vote of 95 to 3. That bill then went to the House of Representatives, where certain Members of the House opposed the risk assessment amendment. In fact, the amendment was first not included in the House version of the EPA elevation bill. It then went to the Rules Committee, where a risk assessment amendment similar to mine was declared not to be in order, and the rule then came to the floor of the House of Representatives.

The House of Representatives turned down that rule and, in effect, said that we should have a risk assessment amendment. I then proposed to put that amendment on this legislation, and we began negotiation with both Sally Katzen, the assistant administrator of OMB, and the distinguished Senator from Montana [Mr. BAUCUS].

We have now resolved our differences, Madam President. I can tell the Senate that the amendment, as agreed upon, is, I believe, a better amendment than when it passed the Senate. What it does is require that in any major regulation—a major regulation defined as that which has a \$100 million effect on the economy or upon the people who have to comply with the regulation—that a risk assessment certificate be prepared in every one of those major regulations.

This would be approximately 20 to 25 major regulations each year, and we believe that will cover 85 percent of all regulations which come up. We also provide for limits on the number of risk comparisons. The original amendment required that the administrator, in filing a certificate, compare the risk to others which people ordinarily encounter.

The amendment now calls for a comparison to six risks, three within the jurisdiction of the EPA or other Federal agencies and three not directly related by the Federal Government.

The idea here is that we want the public to be informed about what these risks are, and by comparing them to, say, the risk of getting killed by lightning, the risk of getting killed in an airplane crash. These are the kind of risks that the public can understand. We want this information brought out. The amendment requires that six different comparisons be made.

We require that a cost estimate of complying with the regulation be made, and we require a cost effectiveness certification.

Madam President, risk assessment is, in my judgment, one of the most important tools that rulemakers need to use, particularly in EPA, and I believe we should require other departments of the Federal Government also to use risk assessment. The reason is that in the past, according to EPA's own internal documents, risks and rules were based upon public opinion rather than science.

What this is designed to do is to make the rules of the Environmental Protection Agency based upon science, that they be adopted only after a rigorous cost-benefit analysis is made, and only after a certification that the risk justifies the cost.

I would simply give one example of the kind of thing that this amendment is designed to do. It is an example brought out by Judge Stephen Breyer, who had a case within his own court. As a result of that, he wrote a book called "Breaking the Vicious Cycle," on the question of risk analysis. He points out that he had a particular case before his court involving a toxic waste dump. This was known in the book as "the last 10 percent problem," also known as the case of "dirt-eating children." Chief Judge Breyer, recently nominated by President Clinton to the

Supreme Court, wrote this book, and his favorite example of poor risk regulation is from his own courtroom.

The EPA insisted on the cleanup of the last 10 percent of the waste from the toxic waste dump located in a swamp at a cost of \$9.3 million.

How much extra safety did the \$9.3 million buy? Without this expenditure, the waste dump was clean enough for children playing on the site to eat small amounts of dirt daily for 70 days each year without harm. With the expenditure of \$9.3 million, the soil would have been clean enough for the children to eat small amounts of dirt daily for 245 days per year without harm. But the problem was, of course, there were no dirt-eating children at all because this was a swamp.

Judge Breyer goes into the science of risk analysis, the rigorous method of risk analysis, pointing out that example and others and saying that our Government needs to adopt the best science and needs to adopt this rigorous discipline of risk analysis.

So, Madam President, the amendment as proposed and as agreed to between myself, EPA, Senator MOYNIHAN and Senator BAUCUS, I believe achieves that and does it in a workable effective way.

Mr. BAUCUS. Madam President, will the Senator from Louisiana yield for some questions regarding the amendment?

Mr. JOHNSTON. Certainly.

Mr. BAUCUS. Since his amendment was adopted by the Senate last year, his staff, my staff, and Senator MOYNIHAN's staff have worked together to make a number of changes that substantially improve and clarify the language. In order to make sure that those changes are understood by the Environmental Protection Agency and those who follow the work of the Agency, I think it would be useful to briefly discuss them.

First, why was the amendment expanded to cover proposed rules, as well as final rules?

Mr. JOHNSTON. I added proposed rules so that the public would have an opportunity to comment on the analyses prepared by EPA pursuant to this amendment. I think it is important that EPA take such comments into account, the same as it does with respect to comments on any other aspect of a proposed rule.

I retained final rules because the final rule may be significantly different from the proposed rule. However, to avoid redundancy, I have also revised the amendment to provide that the Administrator need not publish a new statement along with a final regulation where the final regulation is substantially similar to the proposed regulation. Instead, the Administrator may simply provide the Federal Register cite to the statement that was published along with the proposed rule.

Mr. BAUCUS. Why was the phrase "clear and concise" added to subsection (a) of the amendment?

Mr. JOHNSTON. That phrase was added in order to stress that the Administrator's statement and certificate should not be lengthy and full of technical jargon. I understand that this amendment calls for a discussion of matters that are often complex, but I want the Administrator to strive for brevity and readability.

Mr. BAUCUS. Next, please describe the changes to subsection (a)(1), and the purposes of that subsection.

Mr. JOHNSTON. The revised version of subsection (a)(1) begins by calling for a statement by the Administrator that "describes and, to the extent practicable, quantifies the risks to human health or the environment to be addressed by the regulation. . . ." In other words, the Administrator is to describe the nature of the risk, and conduct a risk assessment to quantify the risk with as much certainty and precision as the scientific data allow. The risk assessment should describe the methodologies and assumptions used, and should be based on the best reasonably obtainable scientific information. Based on the quantity and quality of the scientific information, the risk assessment should provide a range of uncertainty with respect to any quantifications.

It is particularly important that the risk assessment distinguish between what we know about the nature and extent of the adverse effects on rodents, for example, and the policy-based procedures that are used to estimate the risk of these adverse effects on humans. Such policy-based procedures should be clearly described as part of the risk assessment.

The second portion of this subsection provides that the description and quantification of risk shall include, "where applicable and practicable, the human health risks to significant subpopulations who are disproportionately exposed or particularly sensitive." This is an acknowledgement that there are significant subpopulations that have been disproportionately exposed to environmental hazards, such as the inner-city poor, and others who may be particularly sensitive to such exposures, like children. Where the regulation could affect such groups, and where adequate data exist to differentiate the effect on them from the effect on the population as a whole, those effects should be described and, if practicable, quantified.

Mr. BAUCUS. I certainly agree. Next, section (a)(2) of last year's amendment called for a "comparative analysis of the risk addressed by the regulation relative to other risks to which the public is exposed." Please explain the changes that have been made in the pending amendment.

Mr. JOHNSTON. Following adoption of last year's amendment, there was

concern that this provision might be read to require comparison to all other risks to which the public is exposed, thereby leading to "paralysis by analysis." Although I think that this concern is based on a rather strained reading of the earlier provision, we nevertheless thought it would be useful to put some clear parameters around the comparative analysis that we are seeking.

The provision now provides that the Administrator is to "compare the human health or environmental risks to be addressed by the regulation to other risks chosen by the Administrator, including at least three other risks regulated by the Environmental Protection Agency or another federal agency, and at least three other risks that are not directly regulated by the federal government." Thus, the Administrator has fully satisfied this provision if she compares the risk addressed by the regulation to six other risks, three regulated by the Federal Government and three not directly regulated by the Federal Government.

Mr. BAUCUS. What is the purpose of these comparisons?

Mr. JOHNSTON. There are actually two purposes. The purpose of the comparison to other federally-regulated risks is to provide policymakers and the public a sense of how the risk addressed by the regulation stacks up against some other risks that the Federal Government is regulating. The purpose of the comparison to risks not regulated by the Federal Government is to provide perspective through information regarding understandable risks that we encounter in our daily lives. With this information, both the public and policymakers will be better equipped to make judgments regarding the allocation of our finite resources to the management of various risks.

Mr. MOYNIHAN. Madam President, I applaud the efforts of the Senators from Louisiana and Montana and wonder if they would yield for additional questions?

Mr. JOHNSTON. I am happy to yield to the Senator from New York. But first let me first commend him for his leadership in the field of risk assessment. It was his environmental risk reduction legislation, introduced as S. 2132 in the 102d Congress and as S. 110 in the 103d Congress, that were the first bills on this important subject. He is truly a leader in this field.

Mr. MOYNIHAN. I thank the Senator and congratulate him on the pending amendment. I certainly support the use of comparative risk as a tool to inform environmental decisions. However, I think that it's important to note that comparative risk assessment methods are still being developed. The data gaps, subjective issues, and uncertainty in any ranking process must be recognized. Does the Senator share that view?

Mr. JOHNSTON. Yes, I do. Comparative risk assessment is an evolving field, and I am confident that we can improve our methods and our base of scientific information in the coming years. In the meantime, as we both know, risk assessment is a tool that is useful today, as long as we bear in mind its limitations as well as its strengths. Furthermore, we cannot afford to wait until it is perfect. We need to use it to help put environmental concerns in perspective, knowing that we will get better at it the more we use it.

Mr. BAUCUS. If the Senator would yield, I have heard concerns that it is inappropriate to compare voluntary risks, such as smoking, to involuntary risks, such as air pollution. Does this revised provision take a position on this issue?

Mr. JOHNSTON. No. My feeling all along has been that the purpose of the comparison is to create reference points that put in context the risk addressed by the regulation; this, in my mind, has nothing to do with whether the risk is voluntary or involuntary. However, my amendment is silent on this issue and leaves that judgment to the Administrator. If she feels that involuntary risks should be compared only to other involuntary risks, the amendment allows her to do so. The key is to make comparisons that can be readily understood by the public.

Mr. BAUCUS. Does this provision require the Administrator to conduct a risk assessment for each of the other risks that the Administrator chooses for purposes of comparison?

Mr. JOHNSTON. No; the Administrator should use existing information regarding the nature and magnitude of the other risks used for comparison. With respect to the federally regulated risks used for comparison, the Administrator should rely on existing risks assessments prepared by EPA or another Federal agency. With respect to the risks not regulated by the Federal Government, the Administrator should use peer-reviewed, published estimates of risk.

Mr. BAUCUS. I recall that the EPA prepared a comparative risk analysis when it issued a proposed rule on the National Emission Standards for Hazardous Air Pollutants; Regulation of Radionuclides [NESHAPS], 54 Fed. Reg. 9612 (March 7, 1989). In section VI.B of the proposed rule, EPA provided, for comparative purposes, a description and quantification of various other risks. Some of these risks were natural and not regulated; others were regulated. Is this the type of comparative information that this provision would require?

Mr. JOHNSTON. The Senator is correct. That rule placed the radionuclide risk in perspective by comparing it to the risks from natural background radiation, home accidents, rare diseases, tripping and falling, and rabies.

Mr. BAUCUS. Subsection (a)(2)(B) provides that the Administrator shall compare the risk addressed in the regulation to at least three risks that are not directly regulated by the Federal Government. Why did we use directly in this provision?

Mr. JOHNSTON. Because many of the risks that we face in everyday life are regulated in some way by the Federal Government. For example, there is a very small risk of dying of liver cancer from eating peanut butter. Even though the Federal Government undoubtedly has regulations regarding the production and labelling of peanut butter, I regard this risk as one not directly regulated by the Federal Government.

Mr. BAUCUS. Paragraph (a)(4)(C) of the amendment provides that the Administrator must certify that there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated and that would achieve an equivalent reduction in risk in a more cost-effective manner. Can you give us a brief description of this provision?

Mr. JOHNSTON. My main concern is that the regulation be designed in the most cost-effective manner possible. In response to concerns raised, I added the phrase "allowed by the statute" in order to make clear that no regulatory option prohibited by the applicable statute need be considered in determining the most cost-effective design. Similarly, I added "achieve an equivalent reduction in risk" to make clear that this amendment does not dictate a particular level of risk reduction; it simply says that once the level of risk reduction is determined by the Administrator, the regulation must be designed in the most cost-effective manner to reach that level.

Mr. MOYNIHAN. If the Senator would yield, section (a)(4)(D) provides that "the regulation is likely to produce benefits to human health or the environment that will justify the costs. . . ." What is the significance of using the word "justify"?

Mr. JOHNSTON. Justify was used rather than exceed for two reasons. First, it is often more difficult to estimate the benefits of an environmental regulation than it is to estimate the costs. For example, a clean air regulation may have far-reaching benefits for the environment that are difficult to quantify.

Consequently, I wanted to give the Administrator the latitude to take into account those difficult-to-estimate benefits. If the Administrator concludes that the benefits of the regulation, both quantifiable and unquantifiable, justify the costs to be incurred, the amendment allows her to enter a positive certification on this point. All I ask is that the Administrator candidly describe in her certificate the nonquantifiable benefits that

weighed in her determination, and a brief statement of her reasons.

The second reason for using justified is that other policy considerations may constitute a benefit of a regulation. For example, the Administrator may conclude that poor children in particular inner-cities may be suffering from exposure to a chemical that poses a human health threat. Even though the quantifiable benefits may not exceed the quantifiable costs, the Administrator may determine that the regulation is nevertheless justified on other policy grounds. Again, I have no objection to these considerations, as long as the Administrator clearly articulates them as part of her certificate.

Mr. BAUCUS. I share the Senator's view. It is perfectly appropriate to consider nonquantifiable benefits, and to take into account other policy considerations, but it is also imperative to clearly and candidly describe how those matters figured in the decision to issue the regulation.

I would like to give some general and some specific examples of difficult-to-quantify benefits. General examples include avoided cancers of noncancer diseases that reduce the quality of life, the preservation of biological diversity and the sustainability of ecological resources, and the maintenance of an esthetically pleasing environment. Maintaining a clear view of the Grand Canyon, preserving a unique species of fish or wildlife, or extending the overall life expectancy of a population are more specific examples of benefits that are difficult to quantify.

Mr. MOYNIHAN. If the Senator will yield, does the Senator from Louisiana intend for the Administrator to be able to consider limitations in methods, sparse data, and uncertainty about the relationship between exposure and effect in her justification? I think it is critical that these matters be considered and discussed by the Administrator so that we can better understand how decisions are made and how we can improve them in the future.

Mr. JOHNSTON. Yes, I intend that the Administrator be able to consider such matters. However, when she does so, she must clearly and specifically explain what she is considering and why.

Mr. BAUCUS. If the Senator will yield, I would like to ask the Senator from Louisiana to describe what is meant by the phrase "or change the factors that the Administrator is authorized to consider in promulgating a regulation pursuant to any statute, \* \* \*."

Mr. JOHNSTON. My amendment requires the Administrator to engage in analyses that are not called for in every environmental statute. For example, not all environmental statutes require risk analysis and cost-benefit analysis. This phrase makes clear that the requirement in my amendment to

perform these analyses does not change the factors, contained in the applicable environmental statute, that the Administrator is authorized or required to consider in deciding whether to promulgate the regulation. Conversely, this phrase does not relieve the Administrator of the obligation to perform any of the analyses required by this amendment, even if the applicable environmental law forbids the consideration of such analyses in promulgating the regulation.

Mr. BAUCUS. Please describe section (e) of the amendment, relating to judicial review.

Mr. JOHNSTON. My understanding is that EPA regulations are usually reviewed under the Administrative Procedures Act, which allows a court to set aside an agency action if certain relatively narrow tests are met, i.e., it is arbitrary and capricious, violates the Constitution, is in excess of the agency's statutory authority, or is unsupported by substantial evidence. Section (e) makes clear that my amendment creates no new rights to judicial or administrative review. If a major regulation is subject to judicial review under any other provision of law, such as the APA, the adequacy of the certification itself, and any alleged failure to comply with this section, may not be used as grounds for affecting or invalidating that major regulation. For example, if the Administrator certifies that the benefits of the regulation justify the costs, that certification could not be challenged as arbitrary and capricious.

However, the statements and information prepared pursuant to this section, including the statements and information contained in the certification, may be considered as part of the review conducted under such other provision of law. For example, such statements and information could be cited to show that the regulation is arbitrary and capricious under the APA.

Mr. BAUCUS. Will the Senator from Louisiana please explain why the amendment now applies to major rules, defined in subsection (f) as regulations that may have an effect on the economy of \$100 million or more in any 1 year, instead of all rules?

Mr. JOHNSTON. The amendment adopted by the Senate last year applied to all regulations issued by EPA. That aspect of the amendment was criticized by the Administration and environmental groups as over-inclusive, and I was persuaded that their criticism has merit.

Consequently, the amendment is now limited to major regulations, which are defined in subsection (f) as those that have an effect on the economy of \$100 million or more in any 1 year. That threshold was chosen based on a May 11, 1994, letter that I received from Sally Katzen, Administrator of OMB's Office of Information and Regulatory

Affairs, stating that a \$100 million threshold would capture approximately the largest 20-25 proposed and final regulations per year. More importantly, she estimated that those 20 to 25 regulations would account for roughly 85 percent of the total cost to the economy imposed by EPA rulemaking. I ask unanimous consent that her letter be printed in the RECORD at this point.

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, May 11, 1994.

Hon. BENNETT JOHNSTON,  
U.S. Senate, Washington, DC.

DEAR SENATOR JOHNSTON: In connection with your consideration of the appropriate threshold for application of the Johnston amendment, you asked me to provide an overview of Environmental Protection Agency (EPA) rulemaking activities, including an estimate of the number of rules reviewed by the Office of Information and Regulatory Affairs (OIRA) each year that have an annual effect on the economy of \$100 million per year or more.

Over the past several years, EPA has published 300 to 400 final rule documents each year in the FEDERAL REGISTER, and a corresponding number of proposed rules, for a total of 600 to 900 documents each year. Historically, under its Executive Order No. 12291 review, the Office of Management and Budget (OMB) has reviewed about a quarter of these documents. The remaining 500 to 650 final and proposed rules include, for example, EPA actions on State Implementation Plan revisions (roughly 300 a year), EPA actions on individual pesticide tolerances (roughly 150 a year), and procedural rules or corrections to previously issued rules (roughly 100 a year). Most of these actions were exempted from Executive Order No. 12291 review in the early 1980's.

Under Executive Order No. 12866, EPA is submitting for review about two-thirds of the rules and proposals that it submitted under Executive Order No. 12291. In addition to those previously exempted, we are no longer reviewing under Executive Order No. 12866 relatively minor rules, such as rules establishing new monitoring techniques, State petitions for alternative fuel volatility standards, and minor rules for an individual industry.

Historically (and currently), EPA has submitted roughly 20 to 25 proposed and final rules each year that would have an annual effect on the economy of \$100 million or more. A small subset of reviewed rules—three or four rules a year—account for as much as 70 percent of the total costs imposed by EPA rulemaking in any given year. All of the rules with an effect on the economy of \$100 million or more per year would account for roughly 85 percent of the total cost to the economy of EPA rulemakings promulgated in that year. Our best estimate is that the inclusion of rules having an economic effect of \$50 million or more per year, instead of \$100 million, would increase the number of these rules (and the workload) by 50 percent (or 10 to 15 proposed and final rules per year). These additional rules would account for only a modest incremental fraction of the total cost of EPA rulemaking (probably less than 10 percent in a typical year). Given the relatively small contribution of these smaller rules to the total cost of EPA rulemakings, the benefits of requiring a

major benefit/cost study will also be correspondingly smaller. It is for this reason, that the benchmark of \$100 million or more per year has been used since 1974 to identify major rules requiring analysis.

If you have any further questions concerning this, please give me a call.

Sincerely,

SALLY KATZEN.

Mr. JOHNSTON. I stress the importance of the 85 percent figure in my decision to move the threshold to \$100 million. I think that applying the amendment to regulations that impose 85 percent of the regulatory costs is an acceptable cutoff, but I also intend to track that figure in the coming years to make sure that it does not significantly decline. If it does, I intend to offer legislation to lower the threshold, and would like the assurance of the Senator from Montana that he would join me in that effort.

Mr. BAUCUS. I agree that we should use the \$100 million threshold because that is the threshold that has been used in regulatory executive orders since at least 1981. However, I would share the concern of the Senator from Louisiana if the 85 percent figure fell significantly, and pledge to work with him to amend the threshold if that happens.

Mr. JOHNSTON. I thank the Senator. I also think that it is important to explain what subsection (f) means when it defines a major regulation as one that "the Administrator determines may have an effect on the economy of \$100,000,000 or more in any one year." Although these words were largely borrowed from the Clinton administration's Executive order on regulatory review, we need to express our own intent regarding their meaning.

First, the word "may" was used instead of "will" because we want the Administrator to err on the side of applying the pending amendment to regulations that are estimated to be close to the \$100 million threshold and the precise economic effect is uncertain. I would be very concerned if, after the enactment of this provision, a pattern were to develop of regulations that are estimated by EPA to have effects on the economy or \$80-100 million, particularly if there was evidence that the actual effect on the economy turned out to exceed \$100 million.

Second, "effects on the economy" is a rather broad phrase that is intended to include the costs to the U.S. Government, State and local governments, and the private sector of implementing and complying with the regulation, as well as other effects on the economy that are attributable to the regulation, such as the loss of jobs and reductions in industrial output. It is important to note that the benefits of a regulation cannot be netted against the costs for purposes of determining the effects on the economy. Does the Senator from Montana agree?

Mr. BAUCUS. Yes. I believe that the Senator has aptly described our intent.

Mr. MOYNIHAN. If the Senator will yield, I would like to briefly discuss with the Senator from Louisiana the relationship between the pending amendment and section 15 of the Safe Drinking Water bill, which I offered in the Environment and Public Works Committee. Section 15 asks the Administrator to compare the risks, costs, and benefits of agency actions across sources of pollution. The goal is to provide the Administrator with information that will help inform her decision-making now, but equally important, to build the Agency's capacity for future decisionmaking. My understanding of the pending amendment is that it requires the use of the tools currently available to prepare estimates of risks, costs, and benefits when EPA adopts major regulations. Thus, I think that section 15 of the bill and the pending amendment emphasize two different aspects of the risk assessment and cost-benefit analysis issue. Does the Senator agree?

Mr. JOHNSTON. Yes. Section 15 emphasizes the improvement of our methodologies in this field, while the pending amendment focuses on the analyses that should be performed when EPA adopts major regulations. I see the two provisions as complementary.

We also need to briefly discuss the process that we are agreeing to follow after this bill passes the Senate. Because the Senator from Montana will lead the Senate conferees on this bill, and because I will not be a conferee, can the Senator assure me that he will vigorously defend this provision in conference, and consult with me if any changes are proposed?

Mr. BAUCUS. Yes. I not only support this provision, but also will regard it as the position of the Senate, which I am bound to defend in conference. In the event that others in conference propose to make changes to the amendment, I will be happy to consult with the Senator from Louisiana.

In turn, will the Senator from Louisiana agree to encourage his colleagues to accept the compromises reflected in his revised amendment?

Mr. JOHNSTON. Yes. I am satisfied with the revised amendment, and will urge those who have been advocating the statutory application of risk and cost-benefit analysis to EPA regulations to support its enactment.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, in the words of the famous American philosopher Yogi Berra I feel like this is "deja vu all over again."

The question before us is, Is this a killer amendment? Let us review the bidding.

Last April 29, while the Senate was considering the EPA Cabinet bill—that was the bill to make the head of the EPA a member of the President's Cabinet—the Senator from Louisiana pre-

sented an amendment on risk assessments and cost-benefit analysis very similar to this amendment that we are considering here today. The Senator argued forcefully, and I might say persuasively, as he can. Few people can exceed the persuasive powers of the senior Senator from Louisiana.

His point was that EPA promulgates too many regulations without giving adequate consideration to the costs being imposed on the regulated community. He argued that the EPA regulations are frequently designed to address risks that in his and others' judgments sometimes are too small to be addressed.

After negotiating with the administration officials and some of the leading environmental leaders in the Senate, the Senator modified his amendment and we were assured that the amendment, as modified, was not opposed by the administration and seemed to be acceptable to everyone, including those of us who care deeply about EPA and its ability to carry out its mission.

Based on that and the persuasive powers of the Senator, 95 Senators came to the floor and approved it and only 3 Senators voted against it. That is a pretty good margin any day around here.

What happened after that? Well, people had a chance to more thoroughly consider the amendment. They realized it was not entirely a benign amendment, and it ran into significant opposition, as the Senator from Louisiana has said, in the House of Representatives. And the environmental leaders in the House fought back efforts in the committee to add the amendment to the House version of the EPA Cabinet bill. The environmental leaders also convinced the Rules Committee that the amendment was not germane and obtained a rule that would have precluded any attempt to bring the Johnston amendment up as an amendment on the floor.

As was pointed out, the rule was defeated on the floor, which does not happen very often. What happened then? Well, the environmental leadership of the House pulled the bill. The EPA Cabinet bill is dead, and it is dead because that amendment is on it.

The environmental leaders in the House said we are not going to bring that bill up, if that is the price of bringing the EPA Cabinet bill to have the risk assessment amendment of the Senator from Louisiana on it.

The point I am making here today is, we have a good bill before us and it has a lot of support. I am talking about the safe drinking water bill. But I believe that if this amendment is adopted and we start down the path that was followed in the House of Representatives, we are not going to see this safe drinking water bill emerge.

I am not just conjuring this. I am not just dreaming it up. We have seen what

has happened and there is the experience. It is exactly what happened with the Cabinet bill. So, Madam President, I think that is one very good reason not to accept this.

Now, let me give you another reason that I believe this amendment is not proper at this time. It is not necessary. No one is going to stand here and say that risk assessment is not a useful tool. It is. It is important for everyone to recognize that this amendment is not about some being for or some being against the use of risk assessment. EPA already is required to use risk assessment, and does it extensively. So risk assessment is nothing. New since 1981 it has been the basis for countless public policy decisions dealing with the regulation of chemicals in our environment.

Indeed, Madam President, there is an Executive order from this President, President Clinton, that continues this tradition of risk assessment and requires EPA to use this important tool when making decisions.

When the Senator first presented his amendment in April of last year, after that and in response to the Senator's concerns the following September—in other words, the amendment was presented the last part of April—in September of last year, 1993, President Clinton issued an Executive order, and that new Executive order covers many of the points addressed by the Senator's amendment.

So the question is, Why do we need it? In my view, we do not need it. I do not think it will add anything good, and I do believe it will produce results that none of us can foresee and few of us will like.

Do not think that risk assessment is without controversy. There is plenty of controversy, and some people say the assumptions that are undertaken when you make a risk assessment are conjured, that they are dreamed up. Who knows? Who can bring up all the assumptions that have to go into a risk assessment?

Let me just give you a little illustration of risk assessment gone haywire.

Take the example of dioxin at the town of Times Beach in Missouri. Most of us here are familiar with that case.

In 1983, 11 years ago, EPA discovered that the town of Times Beach was contaminated with dioxin, so they tracked it down. It turned out someone had disposed of contaminated oil and spread it over the dirt roads in the town to control the dust. It seemed like a good idea. Take a little oil, waste oil, and spread it around and keep the dust down. So they got rid of the oil and they got rid of the dust at the same time.

The provisions of the Superfund required EPA to take some action when dioxin was discovered, but the law did not mandate what kind of standard you have for a cleanup. How do you clean up dioxin? The law did not say that.

The EPA went to the Centers for Disease Control in Atlanta and said, "Give us a risk assessment here. Figure out what the public health consequences are of this dioxin in this nice town of Times Beach."

So they did that. They came up with a risk assessment. And based on the advice of the Centers for Disease Control—which every one of us here admires; we all have great respect for the Centers for Disease Control—they came up with a health risk assessment. It was so strong in presenting the dangers of dioxin that EPA decided to evacuate the town of Times Beach and buy the whole town.

Now we have 20-20 hindsight. We look back and everybody says that decision was an unnecessary overreaction. It was ridiculed.

But there was a decision that came about by risk assessment. They weighed all the things and took the assumption and took the conclusion that this dioxin is incredibly dangerous.

What does risk assessment bode for the future? Well, what about dioxin emissions from municipal incinerators? Or what about the discharges of chlorine from our rivers and lakes? What about the exposure to secondhand cigarette smoke.

To those who want every EPA decision based on a rigorous scientific risk assessment, I say, be careful. You be careful what you wish for. You may get it.

As I stated earlier, this amendment has nothing to do with being for or against risk assessment. It is the extent to which you carry it.

And there are other things involved in all of this besides straight risk assessment. There are sociological situations.

(Mr. DORGAN assumed the chair.)

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

Mr. CHAFEE. May I just finish; then I will be glad to answer questions.

I think we need to do a better job of assessing priorities and costs and benefits, and all of this we can improve on. That is why I supported an amendment by Senator MOYNIHAN during consideration of this bill in the committee. So section 15 of the bill, beginning on page 129, recognizes the importance of risk assessment. This is what it says. This section of the bill directs the Administrator to rank sources of pollution with respect to the relative risks of adverse effects on human health, on the environment, and on the public welfare.

It also directs the Administrator to estimate the private and public costs associated with every source of pollution and the costs and benefits of complying with regulations designed to prevent or reduce the risks associated with each source of pollution. The risk ranking and the cost-benefit analysis are to be communicated to the public and to Congress in triennial reports.

Mr. President, with the Clinton Executive order in place, and with the addition of section 15 that I just touched on, I believe this amendment is unnecessary. I think it should be defeated for the larger good of the bill.

As I pointed out, I think the inclusion of this amendment is going to kill this bill. And I am not just dreaming that up; I am looking at past experience.

I have a number of questions and specific problems with the amendment.

First, why do we limit it to EPA? Why EPA alone? Is this new, such a policy? Why not every agency? Why do we pick on EPA?

If the concern about expanding its scope is one of House committee jurisdiction, why not add at least the Secretary of Energy? This bill is already headed to the Energy and Commerce Committee, so there is no jurisdictional problem. Let us have it apply to the Department of Energy, just as it applies to EPA.

Why does this amendment only look at half the equation? It imposes requirements on EPA only with respect to regulations promulgated to control risks. What about EPA decisions not to regulate? Suppose EPA says we are not going to regulate their decisions, to allow activities to continue without regulatory constraints, even where those activities create significant risk? Suppose there is a risk out there, and EPA says we are not going to regulate? Should we not have the same risk assessment study as when they say they are going to regulate?

What would a risk assessment and a cost-benefit analysis tell about EPA's decision to forgo the regulation of some oil and gas waste under the Federal hazardous waste law?

Mr. President, I know that turning around a vote of 95 to 3 is not the easiest thing in the world, and it is even harder when the sponsor of the amendment has made significant changes to meet some of the criticisms that were expressed against his earlier amendment; that is, the amendment that was brought up last year.

The Senator has made a number of changes to address some of the concerns that people had with his amendment. But he has not made enough changes to satisfy at least this Senator.

For example, the amendment continues to require that the EPA Administrator certify that certain conditions are met when proposing or promulgating a major regulation. The major problem here, Mr. President, is the requirement that the Administrator issue a formal legalistic verification of fact, in essence a declaration of truth. These conditions are not subject to truth or certainty. When you are making a risk assessment, you do not know. Each of these conditions goes to the Administrator's judgment. The Ad-

ministrator has to make a judgment: Was the analysis performed using the best information? Is a regulation likely to result in significant reduction in risk? Was there a more cost-effective alternative? Is the regulation likely to produce benefits that justify the costs?

Imposing this requirement of certifying or issuing a finding as to each of these conditions is unrealistic, and it is troubling to me. It seems to me that a simple statement of the Administrator's judgment as to whether the conditions were met would suffice. He cannot cross his heart and hope to die and raise his right hand.

Mr. President I do not think we need to go beyond the Clinton Executive order.

Do we need to go beyond the new section 15 of the bill? I do not think so.

Because the Johnston amendment goes beyond that, I urge my colleagues to oppose it.

I thank the Chair.

Mr. JOHNSTON addressed the Chair. The PRESIDING OFFICER. The Chair recognizes the Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, just very briefly, because I think the Senator has pointed out that this passed previously by a vote of 95 to 3, and I do not think it is necessary to further justify it for the Senate except to make a couple of points.

The Senator from Rhode Island pointed out that Times Beach was an example of risk assessment gone amok, that caused all the difficulties we had—shutting down a town, spending hundreds of thousands of dollars. I agree with him that certainly Times Beach was a disaster. However, Times Beach is a pertinent example of why you need risk assessment.

The distinguished Senator from New York [Mr. MOYNIHAN], testified before our committee about Love Canal. Here is what he said. I am quoting from page 6 of our report.

There was no data. There was no evidence. There was no research. There were simply newspapers announcements, television announcements, and enacted legislation in 3 weeks' time. As far as I know—and I am prepared to be told I am wrong—but as far as I know, there have never been any scientific health data out of that region to establish any morbidity, much less mortality.

So the Love Canal is an example of why you need risk assessment. We need to put science in the loop before we spend hundreds of thousands or even billions of dollars in the case of some of these amendments.

I pointed out earlier that EPA's own internal documents show that they have not used risk assessments. EPA recognized this in its 1987 document entitled, "Unfinished Business," where EPA systematically ranked the seriousness of the various risks it was addressing and could address. The report found that there was little correlation between the risk that the EPA staff

judged as the most threatening and EPA's program priorities. The report said:

Overall, EPA's priorities appear more closely aligned with public opinion than with our own estimated risks.

EPA, after a study of risk and risk assessment, says that their regulations are in line with public opinion but not with their own estimated risks. These conclusions were confirmed in 1990 by EPA's Science Advisory Board in its "Reducing Risk" report. The report urged EPA to target its environmental protection effort on the basis of opportunities for the greatest risk reduction.

I will close with two thoughts. First, this will not kill this bill. It is now supported by the committee, by the committee chairman; it is supported by EPA. It was worked out with Sally Katzen of OMB. I believe it is an excellent solution to a very, very important and difficult problem. I think it is demanded by the country, by the people of this country.

Mr. President, this amendment as worked out will make this a stronger bill and will bring us rigorous risk assessment, which will both reduce the cost of regulation and ensure that we regulate those risks which are risks to Americans and I believe will help in the health and safety as well as the pocketbooks of taxpayers.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana [Mr. BAUCUS].

Mr. BAUCUS. Mr. President, I think it is fair to say this is not an easy issue. It is one that requires balance, it requires much scrutiny to try to figure out what is the best use of risk assessment and cost-benefit analysis.

Just to clear the record, it is true the earlier risk assessment amendment offered by the Senator from Louisiana was termed as a "killer amendment." That is the reason the EPA cabinet bill has not proceeded in the House. That is true.

It is not true, however, in this Senator's judgment, that this new version is a killer amendment because it is so different. This is not the same risk assessment amendment that the Senate voted on—I think only three Senators opposed it—not too long ago. In addition, the EPA is not opposed to this compromise worked out between the Senator from Louisiana—

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

Mr. BAUCUS. I will.

Mr. JOHNSTON. The Senator is correct, it was worked out with EPA. EPA does not oppose it. I misspoke in saying EPA endorses the amendment. They did not oppose it, and we did work it out.

Mr. BAUCUS. That is correct, it is not opposed—it is not supported, but it is not opposed by the Environmental Protection Agency.

It seems whenever we debate environmental legislation these days, three is-

issues keep coming up. The issues are risk, takings, and unfunded mandates. Some see the three issues as magic potions that will cure all our ills. Others see them as disguised attempts to gut our environmental laws and refer to the three as the "unholy trinity." I think the honest assessment is that any or all of the three may or may not be potions, or gut environmental laws, depending on how they are written. In fact, each of the three issues embodies an important core principle. We should set priorities using, when appropriate, risk and cost-benefit analysis. I do not think many people would disagree with that. We should respect property rights. We should help provide State and local governments the resources to match their responsibilities. I do not think anybody quarrels with those statements.

However, these important principles must be balanced against other equally important principles, such as protecting the public health. After all, that is why we pass environmental statutes. If we get past the slogans on both sides and try to balance these principles, we can work constructively together and improve our environmental laws. That is particularly true in the case of risk and cost-benefit analysis. Properly applied, risk and cost-benefit analysis can increase environmental protection, not diminish it.

Let me repeat that. Properly applied, risk and cost-benefit analysis can increase environmental protection, not diminish it.

Risk and cost-benefit analysis can help us get the most bang for our environmental buck. They can help us set rational priorities, and they can standardize our estimates of hazards, costs, and benefits. We will have greater environmental protection, with properly applied risk and cost-benefit analysis.

For precisely these reasons, we included carefully crafted risk provisions in the bill which the Senate is considering today, both with respect to standard-setting and with respect to the Moynihan amendment that helps establish better overall environmental priorities.

The amendment offered by Senator JOHNSTON goes, I might say, several steps further to apply risk and cost-benefit analysis, but only to major EPA regulations. Last year, the Senator from Louisiana offered another version of this amendment to the EPA cabinet bill. The amendment was approved by an overwhelming vote. Members of the Senate sent a strong message.

At the same time, the amendment generated serious concerns about several issues. There were concerns that, by applying to all EPA regulations, the amendment would lead to paralysis by analysis; that is, everything would be studied to death so the Agency could not function. There were concerns that

the amendment did not give proper consideration to the benefits of a regulation, a point addressed by the Senator from Rhode Island, including environmental benefits; benefits that may be difficult or impossible to quantify. There were concerns the amendment might not sufficiently preclude judicial review and therefore might generate endless litigation.

Over the past several weeks, I have been working with Senator JOHNSTON, Senator MOYNIHAN, and others to address these and other concerns that arose regarding the earlier version of the Johnson amendment, and I am pleased to report the Senator from Louisiana has agreed to several key changes that I think improve the amendment substantially.

Some of the key changes are as follows:

First, the amendment does not apply to all rules, only to those that have an economic effect of at least \$100 million a year. This focuses our efforts on the most significant rules and regulations of the Agency, perhaps a dozen or two out of about 400.

The amendment considers environmental justice, requiring that a risk assessment consider, where practicable, the human health risks to significant subpopulations who are disproportionately exposed or particularly sensitive—a major improvement. The amendment expressly provides that the cost-benefit analysis must consider nonquantifiable benefits. This includes environmental benefits such as protecting species diversity.

The amendment provides that the cost-benefit analysis need not conclude that benefits exceed the costs, but rather justify the costs.

This reflects the fact that, in some cases, environmental benefits, or moral and ethical benefits, may justify a regulation, even if the quantifiable cost exceeds the quantifiable benefits. That is a very important point. That is, the cost-benefit analysis need not conclude the benefits exceed, but rather justify the costs. In many cases, environmental, moral, and ethical benefits may justify a regulation, even if the quantifiable cost exceeds the quantifiable benefits.

The amendment contains tighter language, making it clear that it is not intended to supersede or otherwise affect any underlying statutory standard and is not judicially reviewable.

These and other changes substantially improve on the original version of the amendment. These changes, I believe, will improve environmental regulations without causing unnecessary delay or undermining environmental protection. As a result, I am pleased to cosponsor the amendment.

Again, I thank the Senator for working constructively. I also thank the Senator from New York [Mr. MOYNIHAN] for his efforts. I do believe this is a major improvement.

I might add, Mr. President, we have a lot of tools in our environmental toolbox. There is no one tool that works better than the others.

The analogy I sometimes make is to the many trade tools in our international trade toolbox. We have section 301, special 301, super 301. We have antidumping, countervailing duty provisions. There are lots of different tools we have, in addition to bilateral and multilateral rights, to address different trade problems in this country. We use the one most suitable, according to the circumstance.

It is the same with respect to environmental legislation, and environmental efforts. We have many different environmental tools in our environmental toolbox. We have health-based standards; we have technology-based standards; we have market-based approaches, like provisions of the Clean Air Act. We have nuisance theory, a separate tool; environmental justice; principles of federalism; and, of course, risk and risk assessment. We have risk assessment here because of technological and scientific advances; advances in scientific understanding in our country and in other countries.

I think we must not turn our backs on science, on good science, on sound science. Science will help us better determine which areas we should address ahead of others; where the greater environmental problem lies compared with another effort we might undertake. The more good science we have, the more we are able to understand what choices to make because we cannot do it all. If everything is a priority, nothing is a priority. We are spread too thin. We have to make choices based upon the best information, the best evidence available, and certainly good, sound science is very helpful.

We already consider risk assessment, Mr. President, in a whole host of efforts that the Environmental Protection Agency undertakes today. What are they? Let us just confine ourselves to the Safe Drinking Water Act.

Risk is used in the selection of contaminants. It has to be. This legislation repeals the current provision that EPA must find 25 new contaminants to regulate every 3 years. That is not based on risk. That is repealed. We replace it with a provision that EPA must consider new contaminants, study new contaminants, make recommendations to the Congress as to which new contaminants to write regulations for and choose, at its discretion, regulations for those contaminants that are the most dangerous. That is risk. EPA is trying to decide which contaminant should more justifiably be regulated compared to others.

We use risk in setting standards. By definition, EPA has to use risk in setting standards. You set the MCLG, that is, the goal. You back it down to the standard based upon feasibility.

By definition, risk is used and cost benefit is used. Risk is used in the bill when we delegate the authority for States to develop State monitoring programs, subject to certain guidelines, but when a State develops a State monitoring plan, by definition, it is deciding which parts of the State require monitoring for some contaminants versus other parts of the State where the State would monitor for other contaminants.

There might be certain factories, certain industries in some part of the State which would lead the State to conclude that there are contaminants in the cities and towns which should be monitored to see if those contaminants are in the drinking water. That might not be true in another part of the State. Again, the State, by definition, is using risk assessment.

What this comes down to is what is the proper way, what is the balanced way? How do we use risk without sacrificing human health; without sacrificing the environment; without sacrificing public health? That is really the question.

I must say, I think the earlier risk amendment offered by the Senator from Louisiana went too far in the wrong direction. It was focusing too much on quantifiable costs, not enough on quantifiable benefits and the moral, ethical, and human health benefits that may outweigh the quantifiable costs and benefits.

I think, at this stage in our country's history, there is a little bit of preoccupation with quantifying everything. After all, we are in the computer age. Everybody has spread sheets. There is a tendency to quantify. It is important to quantify, but it is also very important to take other values, other considerations into account, such as the moral, the ethical, the aesthetic, the environmental, as well as the human health—certainly the human health value into account. The re-drafted version clearly takes those values into consideration.

I think, therefore, it is a good resolution at this stage of a very complex issue. This is not the last time we are going to visit risk assessment. It is an evolving concept. It is a very important concept, but it is an evolving concept. I think, again, the resolution makes good sense.

The PRESIDING OFFICER. Who seeks recognition?

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, one of the problems with this amendment is it is 4½ pages long with a lot of detail. As I mentioned previously, we already have the Clinton administration Executive order. We already have the section in this bill that deals with this. Now on top of it comes these 4½ pages. The EPA is currently, in some in-

stances, more than 2 years behind in issuing its regulations. I do not know how it will ever get a regulation out, once they have to start following everything that is in this amendment.

Next, I would like to follow up on what the chairman of the committee was just saying about there are other factors involved than risk. He mentioned environmental and aesthetic and health. How do you figure the value of a wetland, for example? What is the risk assessment? You want to fill it in. The risk assessment presumably is going to do some harm to wildlife, to waterfowl principally. Somehow you do a risk assessment, whatever the value of the waterfowl is. I do not know whether you take the value of a mallard duck when shot and served up for dinner someplace or how you do it. But there are a lot of factors involved in the life that we lead, other than those that can be strictly judged by risk.

It was mentioned that Love Canal proved scientifically there is no problem there. You try and tell that to the people who live there next to that toxic waste dump and on top of it. You can call it apocryphal, you can call it anecdotal, but they had all kinds of evidence of premature babies born, and babies born with all kinds of difficulties that were not in the normal community. So you say to those people in Love Canal, "Look, here we've got it, it's all down. There's no risk here. Stop being foolish."

I think there are other factors to be taken into consideration than just some risk analysis. Because of the complexity of this 4½ pages when they are over 2 years behind in issuing some regulations now, the fact that it solely applies to the environmental community, solely applies to EPA, there is no question that in this Senate there is a lot of effort to go after EPA. Whether it is the big three, the takings amendment, or the risk assessment, or the unfunded mandates, it is always focused on EPA. That is unfortunate, because I think EPA has done a lot for this country. And over the past 20 years that that organization has been in effect, we have a lot for which to be thankful.

Mr. JOHNSTON. Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut [Mr. DODD].

Mr. DODD. Mr. President, I wish to speak on a matter unrelated to the amendment that has just been discussed, and I do not want to have it interrupt the flow of debate and discussion of the chairman on that. So I ask unanimous consent that my discussion

and my colloquy with the manager of the bill would occur outside of the debate that has just transpired or any other remarks that may come pertaining to the Johnston amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Mr. President, I might ask how long the Senator wishes to proceed.

Mr. DODD. Just a couple of minutes.

Mr. BAUCUS. That is fine. I thank the Chair.

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

Mr. DODD. Mr. President, if I could, I have already informed the manager of the bill of what I am about to speak on and would just invite him, and possibly the Senator from Rhode Island, at the conclusion of my remarks, to offer any comments on this generally.

A Supreme Court decision handed down this week, Mr. President, deals with a matter that is unrelated to the safe drinking water matter we are considering, but one might argue that, since it deals with an infrastructure issue in our communities, there is some relationship. I speak of the decision in *Carbone* versus *Town of Clarkstown*, in which, in a 6 to 3 vote, the Supreme Court has concluded that municipalities are restrained, to put it mildly, from directing waste disposal in their own communities. The decision, the details of which I will not go into at great length here, hinges on open competition, which is obviously a very important issue and one that we ought to endorse and support wherever possible—to ensure the promotion of a free competition.

However, as the communities argued, when it comes to the public safety issues associated with solid waste disposal, I would argue that municipalities certainly have a strong and vested interest in having a say of where and in what manner waste generated within their borders is disposed.

Many of the localities to which I refer have made significant investments in recent years to close existing landfills and construct state-of-the-art waste disposal facilities to handle waste. In many communities in Connecticut and throughout the country, these facilities are typically designed to accommodate whatever additional capacity will be needed in the future. This combination of excess capacity and outstanding bonds creates a very difficult burden for managers of these waste disposal facilities. They need to be able to count on a minimum volume of waste to be processed at their facility in order to ensure that the plant will be financially viable.

The citizens of my State have a real stake in the success of these facilities, as do citizens in other communities. These disposal sites often represent the most significant state-of-the-art, envi-

ronmentally friendly waste disposal technologies. Alternatives to these facilities could expose—and have in the past—local populations to unnecessary public health risks. Furthermore, local taxpayers are liable to the bondholders of these facilities. If the facilities fail, they are stuck holding the bill.

So I do not expect, nor would I even suggest, that an amendment ought to be offered here. This is a complicated matter. A 6-to-3 decision is not insignificant, but it is going to pose some very important questions when the Clean Water Act, I presume, comes up.

So I just wanted to raise this issue this afternoon. The distinguished Senator from Montana and the Senator from Rhode Island are expert in these areas. I did not want to miss an opportunity during the consideration of the safe drinking water bill to raise this issue and urge them in their respective jurisdictions to look at this matter.

Hopefully, Mr. President, before this session is over, an amendment or some legislation might be offered to deal with it. This poses a significant financial exposure to many communities, not to mention the legitimate environmental issues that go along with it. The decision has raised important questions about competition and the ability of the communities to deal with health and safety questions in their own jurisdiction.

I ask the managers of the bill to take a look at this. I am sure they already have, or the staffs have informed them. Again, I have no amendment to offer. I know the attorney general of the State of Connecticut, Richard Blumenthal, is very knowledgeable on this subject. In fact, ironically, he clerked for Henry Blackmun, who was one of the dissenting Justices in this matter, along with Justice Sutter, from New Hampshire, and Chief Justice Rehnquist. They were the three dissenting voices on this matter. It is kind of an interesting group of dissenters, if you will, in terms of their points of view.

But I ask them to look at it and consider how we might address it, if we should address it. I am sure there will be some diverse opinion even on that question. But, again, I did want to raise this matter with them today in the hopes that before the session is over we might address the issue.

I thank the Chair.

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

Mr. BAUCUS. Mr. President, the Senator from Connecticut has raised a very important issue as a consequence of the recent Supreme Court decision which essentially overruled States' efforts to direct that solid waste go to their own local incinerators. It was tied in with a related issue, namely, the ability of States to control and limit the shipment of out-of-State solid waste. We are talking about gar-

bage here, plain, simple, garden variety garbage. This is quite a contentious issue, as we all know, essentially because almost every State exports and imports garbage. There are a lot of communities in our country that do not, however, want new landfills constructed in their backyard. They would rather the garbage be dumped, if you will, someplace else.

It gets to the question of State's rights. It gets to the question of the commerce clause in the Constitution. It is quite complicated. It is unfortunate that the Congress has not yet resolved this issue. I think we are getting closer to resolution of how to handle the shipment of interstate garbage, and I say that because the flows of interstate garbage are starting, for some States, to diminish.

The Senator from Indiana is not here, but Indiana used to be a major importing State. Now much less garbage is being shipped into Indiana for various reasons. First, one of the major exporting States is starting to take better control of its own garbage and handling it within its own borders. And second, stiffer regulations with respect to landfills make it more expensive to ship garbage across the country into some other State.

My basic view on all this, Mr. President, is that we should work very diligently to craft a solution which encourages States to take care of their own garbage. I think it is important to encourage a conservation ethic, a recycling ethic, an ethic where people are more responsible and States are more responsible for the garbage they generate and not necessarily dump it in some other State.

Again, it is complex. The Supreme Court has ruled generally in this whole area that, under the commerce clause, with respect to not only flow control but interstate garbage shipments, it is the Congress which has the authority, in fact virtually sole authority, to decide, so it is incumbent upon us as Members of the House and Senate to decide how to resolve this issue.

It is my hope, frankly, that there might be some silver lining in this decision and that the silver lining be a greater impetus to cause Senators to work out an agreement.

I am very thankful that the Senator from Connecticut has brought this issue to the floor. I urge those Senators who are most concerned about flow control, which is the subject of the *Carbone* decision, as well as those Senators who are concerned about interstate garbage shipments, to sit down and talk. For a long time, I have been trying to get these Senators to sit down and talk. They just find it hard to sit down and work out a compromise. Because of the rules of the Senate, it is incumbent that we reach a resolution; reach a compromise. Again, I thank the Senator for raising this

issue regarding the committee's efforts to work to resolve this issue. The Congress has the obligation, under the Constitution, to resolve it.

Mr. CHAFEE. Mr. President, I would like to join in congratulating the Senator from Connecticut for bringing this decision to our attention again.

The problem is he has it in his State. I have it in my State. You have these communities invest in, say, an incinerator because they want to do the job right. They are following every regulation. They want to clean up the town. They are not going to ship it out of the State. All of these things they follow faithfully, and they float the bonds to pay for the construction of the incinerator. They have to depend on a certain flow of this garbage and trash to come. So they quite rightfully enact certain restrictions that everything within their town must come to this one incinerator to guarantee the bonds so that they can pay for it. It all makes sense.

Now, in comes this decision that says they cannot do it. It is very, very troublesome. I know that in the Senator's State he has already a group of incinerators that are running into some financial difficulties. We are in the same situation to some degree.

So it is something that I feel strongly about. I think it behooves all of the Senators that do care, to keep after us so that we will pursue it with the diligence that it requires.

Mr. DODD. Mr. President, just to conclude, let me thank both my colleagues from Rhode Island and Montana. The Senator from Rhode Island has it exactly right. As the Senator from Montana knows, we are trying to address the issue of shipping garbage around; encouraging these towns to handle their own wastes. To some, an incinerator conjures up a billowing, stenchy smoke, to put it mildly. A lot of them are very sophisticated and look like some sort of a high-technology plant, rather than the traditional landfill or dump site; very expensive.

As the Senator from Rhode Island absolutely has it on point, they have to be able to guarantee that they can pay for these bonds. So the flow is coming in.

So trying to manage, rather than shipping it off to Indiana—and we know how our colleague, Senator COATS from Indiana, feels, and how strenuously he feels about garbage being sent to Indiana. Competition is not an illegitimate point. In interstate commerce it is a very legitimate one. How you balance competition with the safety and health questions is a hard one.

But I am very grateful to both of them for their expressions of interest in the subject matter, and look forward to working with them on this issue.

Mr. ROBB addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Virginia [Senator ROBB].

Mr. ROBB. Mr. President, I thank you.

Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The Chair advises the Senator from Virginia that we have a pending amendment before the Senate. Is there objection to setting aside the pending amendment?

Mr. ROBB. I ask unanimous consent to set the pending amendment aside temporarily.

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

AMENDMENT NO. 1726

(Purpose: To establish a hardship community demonstration program)

Mr. ROBB. Mr. President, I send an amendment to the desk for myself and Senator WARNER, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. ROBB], for himself and Mr. WARNER, proposes an amendment numbered 1726.

Mr. ROBB. 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 141, between lines 2 and 3, insert the following new subsection:

(g) HARDSHIP COMMUNITY DEMONSTRATION PROGRAM.—Section 1444 (42 U.S.C. 300j-3) is amended by adding at the end the following new subsection:

“(e) HARDSHIP COMMUNITY DEMONSTRATION PROGRAM.—

“(1) IN GENERAL.—The State agency administering a loan fund pursuant to part G in the State of Virginia (referred to in this subsection as the ‘State agency’) may conduct a program in accordance with this subsection to demonstrate alternative approaches to intergovernmental coordination in the financing of drinking water projects in rural communities in southwestern Virginia that are experiencing severe economic hardship.

“(2) REGIONAL ASSISTANCE FUND.—

“(A) ESTABLISHMENT.—The State agency may establish a regional endowment fund (referred to in this subsection as the ‘regional fund’) to assist in financing projects that are eligible under this subsection.

“(B) USE OF REGIONAL FUND.—The State agency shall invest amounts in the regional fund and shall use interest earned on amounts in the regional fund to pay a portion of the non-Federal share of a Federal grant to assist a project that is eligible under this subsection. Interest earned on amounts in the regional fund shall not be considered to be Federal funds.

“(C) DEPOSITS TO REGIONAL FUND.—

“(i) IN GENERAL.—Notwithstanding any other provision of this title, the State agency may deposit into the regional fund \$2,000,000 from funds made available pursuant to section 1472 for each of fiscal years 1994 through 1997, if there are commitments to deposit into the regional fund a total of

not less than 25 percent of that amount from non-Federal sources.

“(ii) LESSER AMOUNT.—Notwithstanding clause (i), the State agency may deposit into the regional fund an amount less than \$2,000,000 from funds made available pursuant to section 1472, if the amount deposited is equal to 3 times the amount committed to be deposited into the regional fund from non-Federal sources.

“(3) ELIGIBLE PROJECTS.—

“(A) IN GENERAL.—Assistance provided under this subsection shall meet the requirements of subsections (a), (b), and (c) of section 1473.

“(B) ELIGIBLE RECIPIENTS.—Assistance under this subsection shall be available only—

“(i) for a project that serves a disadvantaged community (as defined in section 1473(e)(1)); and

“(ii) to a public water system located, in whole or in part, in Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia.

“(4) ADVISORY GROUP.—The State agency shall establish an advisory group, including representatives of jurisdictions identified in paragraph (3)(B)(ii) and other appropriate parties, to assist the State agency in setting priorities for the use of funds under this subsection. The advisory group shall include a representative of Mountain Empire Community College, Wise County, Virginia.”

On page 141, line 3, strike “(g)” and insert “(h)”.

On page 141, line 13, strike “(h)” and insert “(i)”.

Mr. ROBB. Mr. President, I am here to discuss a proposal that the Virginia Senators would like to include in the reauthorization of the Safe Drinking Water Act.

I understand it has either been cleared or, with the exception of one or two words, is now finally being cleared by both sides.

The Safe Drinking Water Act focuses on improving the quality of drinking water.

Our amendment addresses a more basic issue: those who cannot get drinking water at all.

Mr. President, when you turn on a tap here in the Capitol, or in our homes, water comes out.

It is so automatic we do not even think about it.

But when you turn on some taps in Dickenson County, VA, you get a thick, yellow-orange liquid. It may contain some water; it certainly contains a number of other compounds. It even comes out of the ground that way. For people there, water comes not from a tap, but in jugs, pans, or however else you can carry it from water ditches, cisterns, rain barrels, or neighbors' homes and businesses with potable supplies.

With a small bottle, you can brush your teeth. To take a bath requires several trips to the store, and heating many gallons of water on the stove. It is like 19th-century America—except this situation exists today, on the verge of the 21st century.

The same story is repeated in many communities in the southwestern portion of Virginia, with no access to

water and it is time to do something to correct this deplorable situation.

While S. 2019 provides for State-administered revolving loan funds and grants, it will not remove the barrier which prevents small communities in southwest Virginia from utilizing Federal water assistance resources. Let me explain.

This region of my State is less concerned about improving the quality of its water than it is in getting water to households in the first place. In isolated areas where wells are now dry, families are hauling water, or using water from cisterns or ditch lines.

While southwest Virginia has produced coal and helped this Nation to reduce its dependence on foreign energy sources, its future well-being has been threatened by destruction of its water supplies. This rural, sparsely populated area of the Commonwealth has been mined for coal for over 100 years. Unlike any other part of the State, it has experienced a serious degradation of water quality and supply as a byproduct of the very industry on which its economic health is dependent.

Today, the Virginia Division of Mined Land Reclamation estimates that it would require \$120 million to restore water to households whose water supplies have been degraded by coal mining predating 1977.

I believe it is important to note that the Federal Government has recognized the needs of these small and rural communities by establishing programs, such as those within the Rural Development Administration, the Appalachian Regional Commission, and the U.S. Department of Housing and Urban Development, to assist in developing water projects. These programs offer Federal grants which require a non-Federal match. Despite the availability of these grants, many small communities have not had access to these Federal resources, because they are unable to secure the necessary funds to meet the non-Federal fund requirements. In these instances, the Federal dollars fade away and communities are left without assistance.

My amendment is simple. It encourages the State to undertake alternative approaches to intergovernmental coordination in financing drinking water projects in rural communities in southwestern Virginia experiencing severe economic hardship.

This amendment would authorize the Commonwealth of Virginia to set up an endowment within the context of its revolving loan fund program and use the interest earned from the endowment fund to help rural areas meet the non-Federal fund requirement of Federal water grant programs. The amendment would authorize \$7 million for the establishment of the new funding source.

The main benefit of this amendment is that it would enable small commu-

nities to take advantage of other existing Federal funds for water projects. The project would also provide an opportunity for experimentation with securing non-Federal financial support for financing public water systems in small communities.

I cannot express enough how important this endowment fund is to those Virginians of the southwestern part of the Commonwealth. This is an effort that the local and State representatives have been advocating for years. Most of us take the availability of water for granted. We do not have to think about whether there will be water to drink, water to bathe in, or water to wash our children's clothes in. This is not the reality that southwest Virginians face every day.

This amendment will let them know that we are willing to make a commitment to provide adequate access to water and I would urge my colleagues to accept this amendment.

Mr. President, I yield the floor.

Mr. BAUCUS. Mr. President, the Senator's amendment, which is aimed at solving a problem in southwest Virginia, is basically for a community that needs help and is somewhat depressed. I understand that they are either present or former coal mining communities, communities that are just having a hard time making ends meet and certainly need help under the Safe Drinking Water Act.

The amendment essentially provides that up to \$8 million in the States' own revolving loan fund may be used to help capitalize the fund, the interest of which will be used to help meet the non-Federal portion, and other Federal assistance to address problems. In addition, the allocation would be discretionary; that is, up to the discretion of the State of Virginia.

I think it is an amendment that the committee can accept.

Mr. CHAFEE. Mr. President, it is my understanding that Senator WARNER is a cosponsor of the amendment, am I correct?

Mr. ROBB. The Senator from Rhode Island is correct.

Mr. CHAFEE. I know that when I talked with Senator WARNER, he was enthusiastic about this amendment. We have no objections on this side. I think it is a good amendment, and I commend the authors, Senators ROBB and WARNER.

Mr. ROBB. I thank the chairman and ranking member of the committee for their consideration.

I ask for action on this amendment at this time.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1726) was agreed to.

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

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

The motion to lay on the table was agreed to.

#### OIL POLLUTION ACT

Mr. DOLE. If the Senator from Montana would yield. I, too, have an amendment on the list with respect to the Oil Pollution Act which I would like to offer.

Mr. BAUCUS. Yes, as I understand it, the amendment deals with modifying the definitional scope of the term "offshore facility" in the context of identifying parties for oilspill financial responsibility. Is that correct?

Mr. DOLE. Yes, that is correct. I am particularly concerned that the rulemaking currently underway at the Minerals Management Service will force facilities, that were never intended to provide evidence of financial responsibility, to comply with the provisions of the Oil Pollution Act.

Mr. CHAFEE. I am well aware of this issue. I know our small marina operators in Rhode Island are concerned that their facilities would be defined as "offshore" and thus obligated to provide evidence of financial responsibility up to \$150 million.

Mr. BAUCUS. I agree, there are questions with respect to particular definitions under the act. Although my position has been to let the rulemaking go forward unfettered by legislative action, I understand the uncertainty created by the current situation. Yet, a piecemeal approach to resolving this here, without any real review by the Environment and Public Works Committee would do a disservice to the massive amount of time that went into crafting the oil pollution legislation in 1990. The issue merits greater attention.

Mr. DOLE. I ask then if the chairman and the ranking member would work with me on a more appropriate vehicle than the measure before us to resolve this. Would that be agreeable?

Mr. BAUCUS. I would be more than willing to work with the Senator.

Mr. CHAFEE. I would be happy to work with the Republican leader as well.

Mr. DOLE. With that commitment, I thank the chairman and the ranking member and withdraw the amendment.

Mr. BAUCUS. I thank the Senator.

Mr. DOLE. Mr. President, last August the Minerals Management Service published an advanced notice of proposed rulemaking to implement the Oil Pollution Act of 1990. I understand it received a record 1,700 comments.

The majority of these comments related to the question of what was an offshore facility. An offshore facility has unlimited liability for cleanup and must meet a \$150 million financial responsibility requirement just to operate.

The Oil Pollution Act contains a sweeping definition of "offshore facilities" as, "any facility of any kind located in, on or under the navigable waters of the United States \* \* \*."

In its preliminary interpretation of the law, the MMS has suggested that all facilities that fit into that broad definition would be required to meet the \$150 million requirement. It is my view that Congress never intended to require every, small Kansas oil producer, marina, service station, or farmer with a fuel tank on his property to purchase \$150 million of insurance.

Given current court interpretations of "navigable waters of the United States," I am concerned that thousands of small businesses that are hundreds of miles inland may be classified as "offshore facilities" if the MMS interpretation stands.

Mr. President, it is my view that under the law it is "responsible parties" not "offshore facilities" that are the ones which must provide evidence of financial responsibility.

This amendment, which I will offer at a later time, will clarify that Congress means to limit financial responsibility provisions of the 1990 Oil Pollution Act to only responsible parties whose facilities are located in the traditionally recognized offshore region. It amends the responsible party definition to require evidence of financial responsibility from only those who operate facilities licensed or permitted under the Outer Continental Shelf Lands Act or comparable State laws governing or exploring for, drilling for, producing or transporting oil on submerged lands.

This amendment does not change in any way the requirement that everybody who handles oil to prevent or cleanup oil spills nor does it change their legal liability in these instances. It is a sensible clarification of the law.

I ask unanimous consent that the text of 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 in the bill, insert the following new section:

**SEC. . OIL POLLUTION ACT OF 1990.**

Section 1001(32)(C) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(C)) is amended—

(1) by striking out "applicable State law or" and inserting in lieu thereof "applicable State law relating to exploring for, drilling for, producing, or transporting oil on submerged lands in accordance with a license or permit issued for such purpose, or under"; and

(2) by striking out "43 U.S.C. 1301-1356" and inserting in lieu thereof "(43 U.S.C. 1301 et seq.)."

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senator from Vermont be allowed to address the Senate 4 minutes as in morning business.

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

The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of legislation are printed in today's RECORD under "Statements and Introduced Bills and Joint Resolutions.")

**TAKINGS LEGISLATION**

Mr. LEAHY. Mr. President, all too often, an organized minority can impose its will on the public as a whole. The opponents of regulation often argue that environmental extremists impose their will on the general public. Now the shoe is on the other foot.

Recently, a well organized lobby has developed around the so-called takings issue. The proponents of this theory believe that whenever the Government limits the use of private property, the landowner must be compensated.

This view is extreme. Never in the tradition of Anglo-American law has anyone been permitted to use his property in a way that hurts his neighbor. Common law called it nuisance. Common sense says that your freedom ends where your neighbor's nose begins.

This extreme theory of what constitutes a takings would undermine everything from child labor laws to public health. Should a town have to pay a landowner to stop him from building a hazardous waste dump next to the town reservoir?

Our Constitution appropriately provides for compensation for citizens' private property taken by the Federal Government. However, the Constitution was never meant to allow an individual to use their property to the detriment of the public good.

The Senate has considered and passed, on several occasions, legislation requiring that all new environmental regulations be extensively studied to see if they are consistent with the extreme view of takings. The proposed amendment echoes these earlier efforts.

These studies might be intellectually stimulating, if they were not so expensive.

How much will they cost the Government and the taxpayers? A conservative estimate puts it at over \$150 million a year.

Legislation similar to this proposal has been considered in State legislatures across our Nation. The Governor of Kansas, Joan Finney, recently vetoed a so-called takings bill which would have cost that State \$1.5 million a year to produce new reports and studies.

A takings provision that costs Kansas \$1.5 million, will cost the Federal Government, which is 100 times larger, over \$150 million. That is why I have asked President Clinton to conduct an assessment of the costs of this type of legislation. This proposal and others

like it are being touted as a way to reel in the Federal Government to the benefit of taxpayers. They are not.

As Governor Finney said,

The language of the takings legislation is vague and unnecessary and creates bureaucracy which would divert at least one million dollars in taxpayer's money from more productive uses.

Let me give you an example of how destructive this amendment could be. When I became chairman of the Senate Agriculture Committee I made it my top priority to extend the coverage of the Women, Infants, and Children Program to every child in America. This program makes sure that infants receive the nutrition they need in those crucial and formative, early years of life. This program has been praised by every administration and every assessment of its effectiveness.

The committee found that the prices that WIC paid for baby formula varied widely. Where competitive bidding of WIC formula was required, its price was much lower than where it was not. So I put through legislation that required competitive bidding for the infant formula supplied to WIC recipients.

This so lowered the price of formula, that now there are 1 million children receiving WIC assistance that could not receive it before—at no additional costs to the taxpayers.

Now the big drug companies that produce infant formula do not like competitive bidding. It lowers the prices they receive for formula. If this amendment were law when that bill was passed, not only would the USDA have to do an extensive study on the effect of competitive bidding on the price of formula, it would have required a study of the effect that this would have had on everyone who made or sold infant formula in the United States. Now Congress knew it was going to cut the prices of infant formula when it passed the law. That is why it passed the law. But the waste of the taxpayers funds for this study would not have been the real tragedy.

The real tragedy is that the drug companies could have gone to court and blocked this competitive bidding requirement from going into effect. This would have meant that millions of children would not have received the infant formula they need.

As the chairman of the Agriculture Committee I am deeply disturbed about the implications that this proposed amendment would have on agriculture programs.

This amendment will cripple disaster programs. Aid to farmers hurt by a disaster could be argued to be a taking from farmers benefiting from a disaster.

This amendment will threaten the Conservation Reserve Program and any program like it in the future. Any action to extend or not extend contracts

will have an impact on the property of farmers and the commodity market as a whole.

This amendment will jeopardize our ability to protect our livestock and crops from pests and disease. The Secretary of Agriculture's ability to eradicate animal diseases and destroy invested material would be severely compromised.

This amendment will cause fluctuations in commodity prices and supply. It will lower the overall quality of American produce and destroy markets for American agricultural products. All Federal marketing and promotion orders would be threatened by this amendment.

As the chairman of a subcommittee of the Senate Appropriations Committee, I know how tight the discretionary spending available to each of the subcommittees is. Just a few weeks ago this Senate voted to reduce those levels \$13 billion lower. Now we have an amendment which, conservatively, will require the U.S. Government to spend \$150 million more to perform studies.

I urge all of my fellow members of the Appropriations Committee to think carefully about this amendment. This proposal will be an immense unfunded mandate. Instead of the taxpayers funds being used to protect veterans health, to fund a space program, to rebuild our highway systems, to protect our public health and the environment, instead of providing disaster assistance to hard hit areas, instead of feeding children, instead of retraining workers, the legislation will require the Federal Government to spend \$150 million on studies of a spurious legal theory.

Just a few years ago, when the 1990 farm bill was on the floor, a Senator offered an amendment which said that USDA should do no more than 12 studies. The USDA reorganization bill, which passed the Senate by a 98 to 1 vote just 4 weeks ago, contained a provision, included at the request of the ranking member of the committee, requiring that 30 reports be done.

And now, we have an amendment on this floor that will require the Government to spend \$150 million on more studies.

The fifth amendment to the Constitution does not require studies, it requires compensation if property is taken. These amendments are not about takings at all, they are about 150 million dollars' worth of studies that we do not need and that we cannot afford.

Perhaps, we should do a cost-benefit analysis of legislation which tries to improve on the Constitution, but ends up costing \$150 million.

I urge my colleagues to think twice about this action.

#### SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

Mr. BAUCUS addressed the Chair.

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

Mr. BAUCUS. I yield to the Senator from Louisiana [Mr. JOHNSTON].

Mr. JOHNSTON. Mr. President, the Lake Pontchartrain Basin forms one of the largest natural estuaries in the continental United States. The basin drains an area of almost 5,000 square miles from 16 Louisiana parishes and 4 Mississippi counties. The ecology of the basin provides the diverse essential habitat that supports countless species of fish, birds, mammals, and plants. It's extensive wetlands provide the primary nursery for much of the seafood harvested in the gulf coast.

Urbanization, increasing population growth, explosive development combined with intensive land use have resulted in dramatic threats to the environment and ecology of the basin. Sewage and septic tank discharges, animal waste from farms, herbicides, pesticides, fertilizers, stormwater runoff, sediments from construction, and sewage from fishing camps are among the many mounting threats to the basin. These are threats to economics, health, safety, and quality of life for 1.5 million concerned citizens that live, work, and play in the basin.

Discharge of contaminants has been the major cause of the water quality degradation that has: closed Lake Pontchartrain beaches, recreation areas, and rivers to recreation; diminished shellfish and finfish harvest; and caused significant habitat destruction.

I am particularly concerned that this pattern of destruction has put continuing and mounting devastating pressures on the numerous species of animals, fish, and plants that are so essential to a productive basin.

Mr. President, in fiscal year 1991, funding was earmarked in EPA's Abatement, Control, and Compliance budget as a grant to the Lake Pontchartrain Basic Foundation for pollution abatement projects. This initial funding has allowed the foundation to provide technical assistance to affected parties in identifying and implementing pollution abatement projects in cooperation with local and community interest groups. However, without sufficient funding to continue these important voluntary grass-roots pilot projects, effective restoration plans cannot go forward.

My amendment is designed to provide continued funding for those programs devised to reverse the detrimental and destructive trends associated with Lake Pontchartrain. Continuation of the implementation of projects that will restore and preserve the water quality and the essential habitat in the basin is a very high priority to me.

I believe—and I have informed the chairman that I believe—that the Safe Drinking Water Act Amendments of

1994, might be an appropriate vehicle for us to include this legislation that I have proposed to deal with this problem, legislation to grant authority to the Administrator of EPA to provide funding and oversight to the Lake Pontchartrain Basin Foundation to carry out restoration projects for the Basin. I ask the chairman to comment, if he would, on the prospects of moving ahead with this amendment and for any thoughts he has as to the appropriateness of our going forward. I have not offered the amendment to the legislation at this time, but I wanted to explore with him what course of action he recommends at this point.

Mr. BAUCUS. I am keenly aware of the interest of the Senator from Louisiana in this amendment. The Senator has contacted me early and repeatedly on this subject. I think that the Senator has a valid point, the degradation in the Lake Pontchartrain basin is a problem that must be addressed.

The difficulty in facing this problem at this point, however, is that this is a Safe Drinking Water Act. It is not a Clean Water Act. There are many other Senators who have come to the committee with similar requests; that is, requests for provisions for their own States that much more appropriately lie with the Clean Water Act, not with this bill. I have requested of all these Senators that they defer and take up these issues on the Clean Water Act, which I have every intention to bring up in the next couple of weeks.

When that bill comes before the Senate, I expect that the Senator from Louisiana will then urge the Senate to accept his amendment. I say to the Senator that we will very carefully consider the amendment at that time and we will make a good faith effort to find an accommodation. I recognize how important this project is to the Senator from Louisiana and I understand the merits of the program.

Mr. JOHNSTON. I thank the chairman very much for his words of support. I look forward to working diligently with the chairman on trying to legislate this amendment. If this is not the proper vehicle, I am willing to accept that and defer until the Clean Water Act. However, I do feel that we must move ahead with this issue. Needless delay will only exacerbate a situation direly in need of continuing corrective measures.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mrs. MURRAY). Without objection, it is so ordered.

Mr. LIEBERMAN. Madam President, I delivered the substance of the first

five pages of this statement in slightly different form earlier in the debate on the Safe Drinking Water Act Amendments of 1994, but I would like to deliver the entire text of my statement at this time.

I support passage of S. 2019, the Safe Drinking Water Act Amendments of 1994, and I commend my chairman, Senator BAUCUS, and the Environment Committee's ranking member, Senator CHAFEE, for the extraordinary diligence and patience with which they have brought this bill to the Senate floor.

The mood surrounding the reauthorization of this important law has been largely one of frustration. We have heard a lot in the last year or so, Mr. President, about how the 1986 reauthorization of the Safe Drinking Water Act—which passed almost unanimously and was signed into law by President Reagan—imposed overly burdensome requirements on small drinking water systems. We were told as well that some larger systems felt they shouldn't have to invest significant sums of money to achieve what they believed to be minimal gains in the prevention of deaths by cancer.

At the same time, Madam President, we have seen cases like Milwaukee's, where people died because they drank the water from their kitchen tap. The culprit, a contaminant called cryptosporidium, was not even regulated. Unfortunately, Milwaukee is but the most tragic and dramatic example of a nationwide public health threat. EPA tells us that one-third of the 200,000 drinking water systems in the United States exceeded their allowable limits of contamination last year. The Natural Resources Defense Council identified more than 250,000 violations of the Safe Drinking Water Act in 1991 and 1992, affecting 43 percent of the Nation's public drinking water systems serving an estimated 120 million people.

The NRDC report that this statistic comes from, *Danger on Tap*, is instructive. According to the report, the Centers for Disease Control in Atlanta estimates that waterborne organisms cause nearly 1 million cases of intestinal illnesses and 900 deaths annually in the United States. Between 1989 and 1990, 16 States reported 26 major waterborne disease outbreaks affecting more than 4,000 people. By 1991 and 1992, 17 States had reported 34 major waterborne outbreaks affecting more than 17,000 people.

But these statistics only account for impacts on Americans who get their water from public water systems. According to *Health* magazine, July/August 1993, "an estimated 8 percent of Americans—more than 20 million people—still rely on unfiltered water from mostly ground water sources; this water is not part of any public water system and hence excluded from official statistics." The NRDC report fur-

ther tells us that "one study group assembled by the EPA and the American Water Works Association concluded, 'by the time microbes are detected, the water has been consumed.' Thus many experts believe that the true extent of waterborne illness in the United States remains largely unknown."

That is the statistical reality as we understand it. The perception is even worse. One of the most telling statistics of all is this, bottled water is a \$2.7 billion industry. Americans are paying to avoid having to drink from their kitchen taps. More to the point, a recent survey concluded that only 4 percent of Americans believe that drinking water standards are too stringent. Nearly 84 percent believe they ought to be tougher. This is underscored by a 1993 American Water Works Association-Research Foundation study which found that 74 percent of water system customers were willing to pay additional costs in order to raise drinking water quality above Federal standards.

All of the recent studies on the efficacy of the Safe Drinking Water Act program—whether done by EPA, GAO, the American Water Works Association, the Natural Resources Defense Council, all agree that there are certain elements critical to running a program for drinking water that will protect the public health: a strong State-run program; the prevention of new nonviable systems and the authority to consolidate existing ones or force them to find alternate sources of water; stronger research funds and technology development particularly for treatment technologies suitable for use by small systems; training for operators of those new technologies; more directed monitoring programs.

They also all appear to agree that until now there have not been the financial resources to help make that happen. States have the authority under current law for example to relieve small systems of certain monitoring requirements, if the State can demonstrate that the contaminant to be monitored for has not been used in that particular watershed. But States do not, as a rule, have strong enough State programs to be able to make that assessment. With most drinking water programs being run by State departments of health, perhaps it is because their resources have been drained by other pressing health protection or awareness programs.

This is unfortunate, particularly as now is the time that the requirements of the Safe Drinking Water Act are increasing. The 83 contaminants that the 1986 law instructed EPA to set standards for are coming due. This in itself was apparently enough to panic a lot of States and particularly those with a lot of small systems. How in the world were those systems going to be able to comply with additional monitoring and perhaps treatment requirements when

they were struggling to meet those already required?

Clearly, we needed to find a way to address real compliance problems while not compromising public health protection. We needed to make sure that we were using the best available science upon which to base contaminant monitoring choices and frequency. We needed to find a way to help States mount strong State-run programs so that they could help their own small systems protect the health of their customers. We needed to recognize that the cheapest way to control drinking water contamination was not to treat it, but to prevent it, at its source.

S. 2019, reported unanimously from the Environment and Public Works Committee did all of this. It established a new State revolving loan fund of nearly \$6 billion dollars to assist States with compliance with Federal law. It set up a system by which small systems could meet safe drinking water standards without going broke, a process by which they could achieve a variance if there were no way to either combine with another system or seek an alternate source of drinking water. States would be able to substitute their own monitoring programs for EPA regulations.

S. 2019 would also require some efforts from States, namely that they have the legal authority to prevent new nonviable systems from forming, and that they establish a strong State program to encourage the restructuring of existing nonviable systems. In addition, S. 2019 required States to develop a process by which the State could review a source water protection plan should one be developed and presented to the State.

We are faced with a serious public health concern and a public health threat. At the same time we are faced with increased costs—for smaller systems. It is important to keep in mind here that, according to EPA, "the total annual cost of all 84 [drinking water] standards now on the books is expected to reach \$1.4 billion nationally by 1995." The fact is that approximately 80 percent of households pay \$3.00 to \$13.00 per year for compliance with all SDWA regulations.

The truth is that large systems find it relatively easy to spread the costs of compliance among a large rate payer base. Small systems, obviously, do not. The key is to deal with the legitimate economic needs of the small systems while not compromising the public health of Americans who get their drinking water from large systems and can afford the better water. No where has this conflict come into greater relief than in the area of how to set a drinking water standard. While the committee, rightly, was willing to go a long way to ease the financial burden on small systems, and on large systems

for that matter, it was not willing to stray far from the current standard setting process for contaminants. I think that is right. Almost 90 percent of the American public is served by large systems, over 10,000 customers. Conversely, almost 87 percent of all systems are small, less than 10,000 customers. The drinking water standard under current law requires that the EPA Administrator set the standard or the maximum contaminant level using best available technology economically achievable. In the case of carcinogens, where any exposure could result in a tumor, the Administrator is constrained by a maximum contaminant level goal of zero exposure. So the standard or maximum contaminant level is set as close to zero as possible using BAT economically achievable. For noncarcinogens, there is a more easily identified threshold. Above a certain amount of a particular contaminant, people get sick; below, they do not. The goal is set at that threshold. The standard or the MCL is in almost every case also at that threshold because EPA has been able to identify the best available technology economically achievable to get us there.

The trouble is that the term "economically achievable" is set based on the circumstances under which 90 percent of Americans get their drinking water—from a large public system. That leaves the remaining 10 percent with a big bill for drinking water—if they want to meet Federal standards. How do we address their economic need?

Some suggested we lower the standard by defining "economically achievable" as that technology which a small system could afford. This would have had the effect of lowering the health protection of 90 percent of Americans—even though they could afford it. The committee rejected this solution.

Then it was suggested we have two different standards, one for people who were served by a large system, and another, less stringent for those who lived in rural areas, trailer parks, those served by hospitals, perhaps; the drinking water on trains, in prisons. That wasn't acceptable either.

Finally, it was suggested that we substitute a cost/benefit analysis procedure for the technology based standard economically achievable. That sounded benign until one took a closer look.

Cost-benefit analysis, risk assessment, both sound like good principles, and they are. Risk assessment is a tool used throughout the Safe Drinking Water Act, as is cost/benefit analysis. But we need to be very careful about how we use these tools because they may not be benign.

If we were to take away the best available technology standard and replace it with a directive to the EPA Administrator to develop a process by

which she would determine whether the amount of money spent to treat a particular contaminant was worth the additional cancer deaths it prevented or, in the case of noncarcinogens, the intestinal distress it prevented, we would be shifting the basis upon which the Administrator sets a drinking water standard. We would be requiring the Administrator to determine—not what a system could afford to do—but how much a life is worth.

That is a cost/benefit analysis. It is risk assessment in its way, but it is not determined by science. It is a value judgment, ultimately, as most risk assessments are. And in the case of drinking water standards, where such value judgments will result directly in impacts on human health and mortality, I believe it ought to be the elected representatives, the Congress, and not the officials who work in the government agencies, who should be required to make that determination. Largely, this is a matter of accountability. We as the elected representatives of the people, must accept the responsibility to be accountable for these value judgments and their health impacts.

The truth is, Mr. President, we made our value judgment, our cost-benefit analysis, our risk assessment in 1986. And the committee, with some modifications and some new flexibility for the Administrator, has reaffirmed it. Our assessment is that it is worth what you can afford to avoid an additional death by cancer as a result of contaminated drinking water.

Unable ourselves to assign a dollar amount to that additional cancer, to say for example it's worth \$10 million or \$1 million or \$100,000 or \$1,000 to avoid an additional cancer, we didn't buck the decision to the EPA and tell them to make the value judgment. Instead we made it, we said, "it's worth what you can afford."

Now, the committee, under extraordinary pressure to ease the financial burden on small systems in every single possible way, and being responsive and responsible, met with those who advocated a different standard. Ultimately, I believe, an effective and defensible compromise was reached.

The committee's bill as reported would still require in the case of carcinogens that the standard be set as close to zero as best available technology economically achievable will take us. But it did recognize that sometimes science is not as exact as we would like and that sometimes there might be technologies significantly less expensive that would deliver essentially equivalent health protection. In those cases we ought to allow the Administrator to back off a technology based standard economically achievable and embrace the less expensive version, if you will.

The managers' amendment offers a further refinement. Rather than mak-

ing the health test what is "essentially equivalent," the managers propose that the alternative standard ensure "health risks not significantly different from." I think this is an improvement. This language makes the measurement a bit more precise when we're comparing cases of lifetime exposures to cancer.

The managers' amendment also seeks to extend this flexibility to standard setting for noncarcinogens. This is more problematic, as there does not appear to be any sound scientific methodology for applying the same process to contaminants which render acute rather than chronic effects. To account for that, the managers' amendment directs the National Academy of Sciences to establish whether or not there is a sound scientific basis for the change and if there is, to recommend it to EPA. Upon such recommendation, and the establishment of appropriate scientific guidelines by the EPA Administrator, published in the Federal Register, the Administrator will have the option of choosing a less expensive technology if it poses a reasonable certainty of no harm.

The new language also calls for a study on the potential impacts on so-called sensitive subpopulations, such as pregnant women and infants or those more disposed to adverse reaction to contaminants present in drinking water. It was, for example, those with impaired immune systems who died as a result of the cryptosporidium outbreak in Milwaukee. Personally, I prefer the language that the committee had in the bill it reported to the floor, that which would require the EPA explicitly to consider these subpopulations when setting standards. I think both measures are warranted. A study to determine in what instances and for which contaminants we can identify sensitive subpopulations, and a corresponding direction that the Administrator consider the results of the research when setting maximum contaminant level goals. It is my understanding that while the Administrator currently has that authority, phrased in the statute as authority to "ensure an adequate margin of safety," this authority is not used consistently. This may be because the data on sensitive subpopulations is so limited. Senator BARBARA BOXER's amendment would remedy that, and I am pleased to be a cosponsor.

There is one other area I would like to comment on. That is source water protection. If we take a step back from the drinking water program and the problems that beset it for a moment, the elements of a truly protective program are clear. In addition to setting acceptable levels of exposure to particular contaminants and monitoring for their presence and treating them when necessary, we would want to

make sure that we were doing everything possible to prevent their occurrence in the first place.

Sometimes we call this pollution prevention. Sometimes we call it watershed planning and management. My own State of Connecticut is a leader in this regard, taking what I feel to be a pragmatic approach. Connecticut is the only State to prohibit absolutely any direct discharge into surface water drinking water supplies. In order to prevent the contamination of underground sources, it has instituted an aquifer protection planning process, run out of the State's Department of Environmental Protection. The Department of Health, which administers the drinking water program, requires additional 40-year water supply plans from its major water utilities. To make this more manageable, the State was divided up into service areas, and these areas were assigned to existing utilities. These utilities are to use their planning process to coordinate individual water system plans and avoid the creation of new systems unable to meet safe drinking water standards.

If you take a step back and think for a minute about where drinking water sources get their contamination, source water protection programs make even more sense. The sources are varied and can only be identified within the course of a watershed and in many cases can only be controlled voluntarily or by agreement among the community. Sources range from leaking septic tanks, combined sewer overflows, the runoff from feedlots and dairies, to construction sites and city streets.

Looking at these threats, EPA's latest biennial water assessment concludes that, "44 percent of assessed river and stream miles and 32 percent of assessed lakes acres that are designated for drinking water are degraded or threatened."

The American Water Works Association concluded from a 1991 study that "The primary pollutants of concern for raw water supplies were turbidity, excess nutrients, microbial contamination, pesticides, and trihalomethane precursors, a potential carcinogen formed when organic materials react with chlorine." The study went on to conclude, "On a nationwide scale, nonpoint sources are responsible for most of the contaminant loading but their effective control is hindered by regulatory, institutional, and financial barriers \* \* \* [W]ater treatment and in-reservoir management practices are not substitutes for effective watershed management."

If you want to lower the cost of monitoring for contaminants and treating those present, the best option may be to protect your drinking water source from the contaminants in the first place. In many cases, you will save money and protect the public health.

Unfortunately, Connecticut is the exception and not the rule. States are generally not using watershed planning and source water protection as a means of protecting public drinking water supplies. A General Accounting Office study in April 1993, stated that "of the 49 States that have 'primacy' for implementing the Safe Drinking Water Act, 34 States do not regularly include the 'watershed's management' as an element in their community water system surveys."

It is important enough that we should consider requiring States to do this kind of planning and management. But the committee took a more modest step. The committee bill would have only required that States have a procedure by which to evaluate the quality of a watershed or source protection plan, should one be presented to them. The bill did not require that such plans be prepared nor that they, if prepared, they be implemented. Unfortunately, in my view, the amendment to this provision accepted earlier in our deliberations weakened even this provision. It merely authorizes States to set up such procedures should they wish to do so and should a utility or community wish to present them with a source water protection plan. I hope we will be able to improve upon this in conference with the House.

Madam President, this is an important bill and an important test for this Congress. Senators BAUCUS and CHAFEE have done the Congress and the public an enormous service by setting the course for public expenditure and public health at a time of fewer available dollars and rising health risks. I am lucky. I live in a State that has fought hard to put a strong drinking water program in place. The residents of my State were the winners from this effort. That is not the case for every American. And wherever you think the responsibility should lie for protecting public drinking water supplies, if the people in your State get sick because of contaminated drinking water, you are going to hear about it. I think that is as it should be. It is in the national interest to ensure consistently safe drinking water for all Americans. Senators BAUCUS and CHAFEE have made that possible with their work on this bill, and I urge all my colleagues to support it.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. BAUCUS. Madam President, I ask unanimous consent that when Senator DOLE offers his takings amendment, that the first amendment in order thereto be one offered by Senator MITCHELL or his designee; that upon the disposition of that amendment, the next amendment in order thereto be one offered by Senator DOLE or his designee; that both of these second-degree amendments be relevant to the subject matter of the first degree; that no other amendments to the Dole amend-

ment be in order; and that upon the disposition of these amendments, the Senate vote on Senator DOLE's first-degree takings amendment, as amended, if amended.

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

#### AMENDMENT NO. 1727

Mr. CHAFEE. Madam President, I send to the desk on behalf of Senator HATCH an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. If there is no objection, the two pending amendments are set aside.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. HATCH, proposes an amendment numbered 1727.

Mr. CHAFEE. Madam 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 82, line 8, after "(D)" insert "and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (B) or (C)".

On page 82 line 10, insert the following after the period:

"The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this title on Indian reservations."

Mr. HATCH. Madam President, my amendment to the pending legislation addresses a persistent problem afflicting States regarding the subject of addressing monitoring and water quality issues of the Safe Drinking Water Act [SDWA] incurred by a public water system operated on an Indian reservation. This is a situation that has been raised by the Utah Division of Safe Drinking Water, and I am pleased to offer this amendment to address this situation.

There are many public water systems that are located within the borders of this Nation's Indian reservations. The entity with primary authority to administer the provisions of the SDWA is the Federal Government, or more specifically, the Environmental Protection Agency [EPA]. The States do not have this responsibility, especially when it comes to the area of enforcement.

Many of these systems located on Indian reservations provide service to municipalities and other communities that are located outside the reservation boundary and that are regulated by the States who have primacy. Various distribution monitoring tests are conducted by officials of these cities, and these tests have in the past resulted in abnormal readings regarding

certain contaminants. This distribution monitoring may flag source monitoring problems which may originate with the system located on the reservation. If this scenario were to happen to a public water system not located on the reservation and not regulated by the State, an immediate enforcement action would be undertaken by the applicable State agency, which in Utah's case would be the Utah State Division of Drinking Water. Appropriate action would be undertaken by State and local officials to address and correct the abnormal condition of the water.

Unfortunately, this prompt action is not always undertaken by the EPA when monitoring and water quality concerns arise with a public water system operated on Indian reservations. In no way should anyone point the finger at local tribal officials; they are innocent parties. My comments should not be misconstrued to suggest error or neglect on their part on this issue. The problem is with EPA and its unwillingness to take corrective action in a timely fashion.

The situation is such that EPA will stridently enforce the provisions of the SDWA when the entities over which the agency has responsibility, the States, have monitoring and/or water quality problems that the States must correct. However, when the tables are turned and the problem originates in an area where the EPA has direct responsibilities, the agency is not as quick to react. The EPA holds a hammer over the heads of the States, which hold smaller hammers over the heads of the cities. Who holds the hammer, large or small, over the EPA? No one other than Congress. That is the reason for this amendment.

The amendment will require the EPA to include a summary of violation, enforcement, and compliance activities on Indian reservations in an annual report to Congress. This report, which will also include a summary of similar activities by the States, will provide recommendations concerning the resources needed to improve compliance by the States and, with this amendment, Indian reservations, with the SDWA.

The purposes of the amendment is to provide a mechanism by which the States can obtain information from the Administrator to be kept abreast of the operations of these systems located on Indian reservations. I also believe this will have a benefit to EPA. If the States are receiving information from the agency on monitoring and water quality issues involving public water systems on Indian reservations and discussing these issues with agency personnel, then EPA officials will be reminded of its regulatory duty over these systems. I hope that future water quality issues related to public water systems located on Indian reservations will be effectively and efficiently ad-

ressed so as not to overburden the States and municipalities serviced by this systems.

I thank the chairman and ranking member of the committee for their willingness to review this amendment. I urge my colleagues to adopt this amendment.

Mr. CHAFEE. Madam President, I will just comment about the amendment which has been cleared on both sides. It deals with a persistent problem afflicting States trying to monitor addressing the monitoring and water quality issues of the Safe Drinking Water Act incurred by public water systems operated on an Indian reservation.

This is a situation that has been raised by the Utah division of safe drinking water, and this amendment addresses the problem.

This is an amendment that we have examined on this side and think it is a good one.

I urge its adoption.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, the committee has reviewed this amendment. This amendment will provide useful information about serious environmental problems on Indian reservations, particularly in Utah.

The amendment has been reviewed and approved by the chairman of the Committee on Indian Affairs. I urge the Senate to approve it.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to the amendment.

The amendment (No. 1727) was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. GORTON. Madam President, for the past several days the Senate has debated legislation to reauthorize the Safe Drinking Water Act. But prior to this debate, communities across Washington State—and the Nation—have debated the merits of the current act and its affect on small and large communities alike.

Washington State has over 14,400 public water systems and of these systems 11,800 are small systems serving 2 to 100 customers—in Washington State all water systems, except those serving one single family residence are considered public water systems. But the problems with the existing act impact both small and large systems alike. From the city of Chelan to the city of Seattle, I have heard from hundreds of local officials about the Safe Drinking Water Act, and the message was clear: "It's time to fix the Safe Drinking Water Act."

After listening closely to the concerns of Washington State, I cospon-

sored S. 1920, a bill to reauthorize the SDWA. S. 1920 was written by the national associations representing mayors, legislators, regulators, and cities across Washington State and was the starting point for a successful series of negotiations with the Environment and Public Works Committee's bill to reauthorize the act.

Supporters of S. 1920 from Washington State include: Governor Mike Lowry; city of Everett Public Works Department; Washington State Department of Health, drinking water division; Mayor Earl Tilly, Wenatchee; Mayor Joyce Stewart, Chelan; Mayor Steve Jenkins, Bridgeport; Mayor John Huselton, Entiat; Seattle Water Department; Tacoma Water Department; city of Moses Lake; city of Walla Walla; Washington Association Water Systems, Ferndale; Mayor Pat Berndt, city of Yakima; Washington Public Utilities Districts Association; Woodinville Water District; Mayor Hartman, town of Coulee Dam; and the list goes on.

Madam President, I ask for unanimous consent that a copy of a Seattle Times editorial on S. 1920 be printed in the RECORD following my remarks.

The Presiding Officer. Without objection, it is so ordered.

(See Exhibit 1.)

#### GORTON SAFE DRINKING WATER FORUM

Mr. GORTON. During the Senate's Easter recess, over 100 people gathered together—mayors, utility representatives, council members, and concerned citizens—in Moses Lake, Washington to talk with me about the Safe Drinking Water Act Chuck Clarke, EPA Region 10 Administrator, and David Clark, director of the drinking water division of the Washington State Department of Health, were on hand to answer technical and policy questions.

I convened this forum after hearing from so many mayors and local officials across the State about the high cost of compliance with the current act. Not surprisingly, the forum was packed with folks who spent nearly 3 hours sharing with me the impacts of the current act on local residents, and one by one they made a strong and persuasive argument for overhauling the current act.

Public utility representatives shared with me the troubles they face as they try to consolidate small systems together and the capital problems which this poses for the utility and the ratepayers. Access to State revolving loan funds and flexibility is a key element of SDWA reform.

Mayors told me about the arguably tough time they have selling their ratepayers on increases—some of which were 100 percent increases—to their monthly water bills to pay for water officials to monitor and treat the water supply for contaminants which do not even exist.

Smaller water system operators told me that they cannot afford to have a

staff person sit in an office all day to file the paperwork required by the act, and that their time is better spent in the field helping small systems effectively monitor their supply.

Several themes emerged from my forum as the key elements of reform for Washington State, namely—risk assessment, costs, flexibility, and funding. My goal throughout this process was to ensure that these predominant concerns were met—and I am comfortable that the majority of the concerns of my constituents will be met within S. 2019, as amended.

BAUCUS-CHAFFEE-HATFIELD-KERREY  
AMENDMENT TO S. 2019

I commend the efforts of Senators HATFIELD and KERREY who worked very hard, together with the Environment and Public Works staff, to amend S. 2019 to make it a good bill for small and large communities alike. In addition, Senator DOMENICI deserves a great deal of credit for introducing S. 1920 and for providing the vehicle for a good series of negotiations and compromises.

In particular I am pleased that S. 2019, as amended, will throw out the one-size-fits-all approach of the current act, and replaces it with flexibility for our States. In my opinion this is the key to the reform of this act. By definition each of our 50 States is unique, and consequently our water sources and systems need flexibility to provide safe water to communities.

Madam President, I believe that upon final passage, S. 2019, as amended, will be a bill which will help small and large communities across Washington State provide safe, affordable drinking water to their customers.

#### EXHIBIT 1

[From the Seattle Times, May 1, 1994]  
SAFE WATER, SUPERFUND WAIT FOR THE  
GREEN LIGHT

Somewhere back in the dark days of James Watt, some environmentalists lost their ability to compromise.

Twelve years of unfriendly administrations, including Watt's tenure as Secretary of Interior, conditioned the greens to sink their heels because they were likely to lose anyway. Now that environmentalism has returned to the White House, it's time for the hardliners to unsink those heels and engage in the democratic process.

Two examples, Superfund and the Safe Drinking Water Act, languish in congressional committees, held up at least in part by environmentalists obsessed with puritanical virtue.

Superfund already has spent billions in a largely futile effort to clean up toxic waste sites across the nation. The law failed because it focused on fixing blame for the dumps instead of cleaning them up. And it requires that each site be returned to a virtually pristine condition, never mind the cost.

Rep. Al Swift, the Bellingham Democrat, has led the effort to rewrite the act, relaxing the liability clauses and, where appropriate, the clean-up standards—all based on realistic costs and benefits. But his efforts have been stymied by a range of stubborn interest

groups, including environmentalists who resist the effort to relax clean-up standards.

Similarly, the well-intended Safe Drinking Water Act over-reached by requiring local water districts, big and small, to test for every conceivable contaminant and remove them, regardless of cost, and even if they pose no risk to people's health. The new standards would cost billions; Seattle's price tag alone would be as high as \$400 million.

And for what? Washington has 14,000 public water systems, most of which have no problem delivering safe drinking water to their customers.

Senate Bill 1920, co-sponsored by Sen. Slade Gorton, introduces some flexibility to the act, including an assessment of costs and benefits before imposing costly requirements. The bill has attracted bipartisan support across the state.

Yet some environmental groups insist the bill is a step backward.

Swift warns against painting everybody the same shade of green. Some environmentalists—the Environmental Defense Fund, for example—have shown a willingness to compromise on Superfund.

But other groups, from the Sierra Club to Greenpeace, remain entrenched in the mistaken belief that political purity will lead somehow to ecological purity. Nature doesn't work that way, and neither does politics.

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam 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. Madam President, I ask unanimous consent to speak for 6 minutes as if in morning business.

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

#### FINANCIAL MISMANAGEMENT AT DOD

Mr. GRASSLEY. Madam President, I would like to speak about gross, continuing financial mismanagement at the Department of Defense [DOD] and the need for some accountability.

I have spoken on the subject a number of times over the past year.

Today, I would like to focus on financial mismanagement at one of the major Defense Finance and Accounting Service or DFAS centers.

I would like to discuss the recon file at DFAS' Denver center.

Mr. John S. Nabil is Director of the Denver Center.

The recon file could be another magic vault in the making.

The recon file is like a festering boil on the books at DFAS' Denver Center. It needs medical attention.

Recon stands for reconciliation. But that's a misnomer, because the recon file is a dumping ground for financial transactions that either cannot be or have not been reconciled.

Worse yet, they may never be reconciled. What records exist have been stuffed in storage boxes. They defy reconciliation, and Mr. Nabil has no tools for reconciling them.

Mr. Nabil's recon file is identified in an audit report prepared by the DOD Inspector General [IG].

The IG report is entitled "Uncleared Transactions By and For Others," Report No. 94-048, dated March 2, 1994.

The DOD IG states that Mr. Nabil is not providing complete and accurate figures on unmatched disbursements.

The DOD IG says that Mr. Nabil is just not reporting some unmatched disbursements and the rest—those over 9 months old—are placed in the recon file.

The DOD IG says that as of January 31, 1993, Mr. Nabil had stashed \$8.8 billion in unreported unmatched disbursements in his recon file.

The \$8.8 billion figure includes \$6.2 billion in cross disbursements and a negative \$2.6 billion in intra-service transactions.

The negative number should be treated as a positive number when determining the true dollar value of unmatched disbursements. DOD likes to net them out to arrive at a lower figure.

The negative numbers could be erroneous payments to contractors that were voluntarily returned.

Even though Mr. Nabil has over 125 accounting clerks dedicated to the recon file, Mr. Nabil has no idea how long the \$8.8 billion in unmatched and unreported transactions have been in the recon file. He really doesn't know what's in the file. He has lost control.

Mr. President, I ask unanimous consent to have pages 22 through 24 of the DOD IG report printed in the RECORD.

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

AUDIT REPORT—OFFICE OF THE INSPECTOR  
GENERAL, DEPARTMENT OF DEFENSE

REPORTING OF UNDISTRIBUTED DISBURSEMENTS

Statistics. DFAS-Cleveland, DFAS-Denver, and DFAS-Columbus substantially understated the numbers and dollar values of undistributed disbursements over 180 days old as of January 31, 1993. DFAS-Indianapolis accurately reported information on undistributed disbursements. We did not include DFAS-Kansas City in our review because January 1993 was the first month that DFAS-Kansas City submitted data, and only part of the undistributed disbursements could be collected. Our analysis showed that the numbers and dollar values of undistributed disbursements were understated by about 860,000 transactions and at least \$7.2 billion. See Appendix A for a breakdown by DFAS Center.

Personnel at the DFAS Centers did not report the same data and had different methods of collecting and calculating the numbers and dollar values of undistributed disbursements. Consequently, the data reported to DFAS Headquarters were incomplete, inaccurate, and not comparable.

Reported Data. Each DFAS Center reported different information to DFAS Headquarters. DFAS-Indianapolis appropriately

considered a disbursement distributed when the accountable station accepted the transaction and recorded it against the corresponding obligation. Unlike DFAS-Indianapolis, DFAS-Cleveland and DFAS-Denver considered disbursements identified to the appropriation level to be distributed. DFAS-Columbus did not submit an "Undistributed Disbursements" report. Only DFAS-Indianapolis reported complete and accurate data in the "Undistributed Disbursements" report.

The DFAS Centers also were inconsistent in reporting information on the "Uncleared TBO" report. DFAS-Indianapolis included uncleared intra-Service transactions and some uncleared cross-disbursing transactions, as well as uncleared interfund billings, in its "Uncleared TBO" report. The same information, along with the balance of the uncleared cross-disbursing transactions, was appropriately included in DFAS-Indianapolis' "Undistributed Disbursements" report. DFAS-Denver included data on undistributed transactions in its "Uncleared TBO" report, but omitted it, along with other undistributed disbursement data, from its "Undistributed Disbursements" report. DFAS-Cleveland did not submit an "Uncleared TBO" report until February 1993, and then reported only uncleared cross-disbursing transactions. DFAS-Columbus reported only some disbursements that had been rejected by Army accountable stations in its "Uncleared TBO" reports. The lack of complete, accurate, and comparable data from the DFAS Centers obscured DoD's problems with undistributed disbursements.

DFAS-Denver. DFAS-Denver did not report complete and accurate data on the numbers and dollar values of undistributed disbursements. In its "Uncleared TBO" report, DFAS-Denver identified 4,157 transactions valued at about \$53.0 million. These intra-Service transactions represented disbursements and collections that had cleared the Merged Accountability and Fund Reporting System and had been placed in a temporary file, waiting to be accepted or rejected by accountable stations. Consequently, these disbursements and collections had not yet been matched against corresponding obligations. However, these data, along with similar data on cross-disbursing transactions (2,939 transactions, valued at about \$21.3 million), were not included in DFAS-Denver's "Undistributed Disbursements" report. Undistributed disbursements not shown on either report included about 6,200 transactions, valued at about \$114.1 million, that had been rejected for more than 180 days by accountable stations. Collectively, DFAS-Denver understated undistributed disbursements over 180 days old by at least \$188.4 million. In addition, undistributed transactions over 9 months old were placed in another file, called a reconciliation file, that contained other undistributed disbursements. The reconciliation file contained about \$3.6 billion in undistributed disbursements as of January 31, 1993 (\$6.2 billion related to cross-disbursements and a negative \$2.6 billion related to intra-Service transactions). We could not obtain the numbers of dollar values of undistributed disbursements over 180 days old because DFAS-Denver could not determine how long the undistributed disbursements remained in this file. Consequently, Appendix A does not include an estimate of the numbers and dollar values of undistributed disbursements in this file. The inability to age these undistributed disbursements means that management has less oversight.

DFAS-Cleveland. DFAS-Cleveland understated undistributed disbursements over 180

days old by about \$6.7 billion. DFAS-Cleveland did not report disbursements and collections that did not match corresponding obligations in accounting systems at its DAOs. In some cases, dollar values that other DFAS Centers had made and reported to the Treasury on behalf of Navy accountable stations differed from the amounts that other DFAS Centers reported in cycles to DFAS-Cleveland. DFAS-Cleveland did not report these differences as undistributed disbursements.

Data Collection and Reporting. DFAS-Cleveland did not routinely collect the numbers and dollar values of undistributed disbursements from any of its 13 DAOs. We obtained undistributed disbursement data from DFAS-Cleveland's DAO Arlington (the office that accounted for about 57 percent of the Navy's funds). STARS contained 932,342 transactions, valued at \$7.1 billion, in undistributed disbursements. The other accounting system, the Integrated Disbursing and Accounting Resource Management System, contained 91,258 transactions, valued at \$140.6 million, in undistributed disbursements. We calculated that about 864,000 transactions, totaling \$6.0 billion, were more than 180 days old. For the other 12 DAOs, the numbers and dollar values of undistributed disbursements were not readily available. Data collected on a one-time basis by DFAS-Cleveland showed that the other DAOs had over \$37.5 million in undistributed disbursements over 180 days old as of the end of December 1992. However, all DAOs did not report the requested data, and the data were not available as of the end of January 1993.

Understated Treasury Data. We requested information that showed differences between the dollar values of disbursements that other DFAS Centers had made and reported to the Treasury on behalf of Navy accountable stations, and the amounts the other DFAS Centers reported in cycles to DFAS-Cleveland, that were more than 180 days old as of the end of January 1993. Records at DFAS-Cleveland showed that \$547.8 million more had been reported to the Treasury as disbursements than had been reported to DFAS-Cleveland. DFAS-Cleveland also understated undistributed disbursements by not reporting disbursements and collections that failed to clear the Consolidated Expenditure and Reimbursement Processing System. As of March 29, 1993, accounts at DFAS-Cleveland contained 11,484 disbursements, valued at about \$90.0 million, and 628 collections, valued at \$2.2 million, for the period ending January 31, 1993. Conversely, personnel at DFAS-Cleveland overstated the number of undistributed interfund transactions by 35,427 because they incorrectly reported the total instead of reporting only the transactions that were over 180 days old.

DFAS-Columbus. DFAS-Columbus reported only part of the undistributed disbursements it was responsible for clearing. All disbursements and collections made by or for DFAS-Columbus and Defense Logistics Agency activities were processed through the DFAS-Indianapolis Transactions By and For Other System. DFAS-Indianapolis omitted from its reports the disbursements that had not been matched to corresponding obligations, and DFAS-Columbus reported only part of them to DFAS Headquarters. Of the 55 accountable and disbursing stations that DFAS-Columbus could have reported on, we found that DFAS-Columbus reported only part of the undistributed disbursements for 14 disbursing stations. DFAS-Columbus also had not reported any data on undistributed interfund disbursements. DFAS-Indianapolis' records showed that a total of 4,498 transactions, val-

ued at about \$163.0 million, should have been reported by DFAS-Columbus as undistributed disbursements on Program Appraisal Review reports. DFAS-Columbus also should have reported other undistributed disbursements, but we could not determine the amounts.

Negative Unliquidated Obligations. The practice of not posting disbursements when obligations are insufficient to cover them gives an inaccurate picture of the true account balance and can result in the failure to detect and correct violations of the Antideficiency Act. At DFAS-Cleveland's DAO Arlington, when disbursements were related to obligations that had insufficient unliquidated obligation authority to cover them, these disbursements were inappropriately recorded as undistributed. The Navy's STARS automatically rejected each disbursement as unmatched if the corresponding unliquidated obligation balance was not sufficient to cover the disbursement. Consequently, disbursements were not matched with obligations and posted to accounting records. Records showed that disbursements exceeded available unliquidated obligations for \$4.0 billion of the \$7.1 billion unmatched in STARS as of January 31, 1993. This practice differed from other accounting organizations and from good accounting practice. DFAS Headquarters should take immediate action to standardize DFAS-Cleveland's accounting and reporting practices for negative unliquidated obligations with those of the other DFAS Centers.

Mr. GRASSLEY. Madam President, this section of the report identifies \$7.2 billion in unreported, unmatched disbursements at various DFAS centers. The figure excludes the \$8.8 billion in the "Recon" file.

And the "Recon" file continues to fester. As of April 30, 1994, it had grown to \$11 billion—an increase of \$2.2 billion in the last year.

The "Recon" file underscores the continuing lack of effective internal controls and the breakdown of discipline in accounting at DFAS.

DOD Comptroller Hamre directed DFAS to reduce unmatched disbursements by 50 percent by June 1994.

Mr. Hamre is trying to get rid of unmatched disbursements because they leave DOD accounts vulnerable to theft and abuse.

Now, by hiding unmatched disbursements in the "Recon" and other temporary files, is Mr. Nabil really helping Mr. Hamre fix the problem?

Mr. Nabil's "Recon" file also tells me that the current estimate of \$41 billion for unmatched disbursements is nothing more than a wild guess. The real figure is probably much higher.

But there is an even more disturbing aspect to Mr. Nabil's "Recon" file.

It is a new disguise for an old problem—another problem that DFAS was directed to fix.

Mr. Nabil's "Recon" file is nothing more than a "Roll-Up" of discrepancies between the accounting records maintained at the base level and the books maintained at the departmental level.

Now, does not that sound familiar?

The "Recon" file takes us right back to square one.

It takes us right back to the \$649.1 million caper engineered by the former Director of the Denver Center, Mr. Clyde E. Jeffcoat.

Several years ago the Air Force discovered a \$649.1 million discrepancy between the balances in its departmental books versus base-level books. To correct the problem, the Air force took \$649.1 million from the M accounts to plug the gap. And presto, the books balanced.

The Air Force had to use the M accounts to force the books into balance, because the Air Force was not doing bookkeeping.

Instead of recording obligations and expenditures in a ledger as they occur, the Air Force was using algorithms—mathematical equations—to estimate the missing numbers.

Well, as any first-year accounting student would know, you can't balance your books that way.

Both the DOD IG and the GAO examined the \$649.1 million transaction and reached the same conclusion:

There was no documentary evidence to support the use of \$649.1 million.

Without documentary evidence, as required by law, we do not know what happened to the money. There is no audit trail. It could have been stolen.

Based on the DOD IG and GAO findings, I concluded that the \$649.1 million should be returned to the Treasury.

So I planned to offer an amendment to the fiscal year 1993 supplemental appropriations bill to rescind the money. That was on June 22, 1993.

But my good friend from Hawaii, Senator INOUE, who chairs the Defense Subcommittee, persuade me to pursue "a more positive approach to fixing the DOD accounting system." He offered to have the DOD IG review the base-level records to pinpoint the problem.

I agreed and withdrew my amendment.

Madam President, I would like to return this subject again tomorrow.

I will try to show how the director of DFAS, Mr. John P. Springett, and the Director of the Denver Center, Mr. Nabil, have failed to honor their mandate: to balance the books and clean up the mess.

Based on lessons learned from recent IG reports, I will recommend that these two officials be held accountable for the deepening financial crises at DOD.

I yield the floor.

#### JAMES BAKER SPEECH

Mr. DOLE. Madam President, according to a poll in the Washington Post this morning, only 13 percent of the American people believe the Clinton administration has a clear foreign policy. Maybe the administration does not want to talk about foreign policy since they criticized President Bush and his

advisers for spending too much time of international affairs.

But it looks like the American people miss the days of Presidential attention to detail in foreign policy. While I did not always agree with President Bush on foreign policy, I knew that its formulation and execution was in the best of hands with Secretary of State Jim Baker.

Under the Bush-Baker team, the Berlin Wall collapsed and a unified Germany was brought into NATO. A multinational coalition led by the United States reversed Saddam Hussein's conquest of Kuwait. The Soviet Union was left on the ash heap of history and 15 new nations were born. Peace agreements brought a decade of bloodshed to a close in Central America. NAFTA was negotiated. The foundations of future agreements were laid in Cambodia, the Middle East, and South Africa.

Madam President, Secretary Baker recently spoke at the Woodrow Wilson Institute in Washington. He offered an excellent analysis of Europe's past and future. He struck a balance between optimism and pessimism—in the realistic terms for which he was respected while in office. Secretary Baker got it exactly right when he said we are ending history's most brutal century on a note of hope due to American world leadership. "That leadership remains as vital today as it ever was."

Europe is free and prosperous today because of American leadership—through two hot wars and the cold war. America cannot shrink from continued leadership today. I recommend this speech to all my colleagues and ask unanimous consent that it be printed in the RECORD.

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

#### IS HISTORY REPEATING ITSELF IN EUROPE?

(By James A. Baker III)

It is a privilege for me to be here this evening on behalf of The Wilson Center, an institution with which I have been proudly associated for over 17 years, and a pleasure to see around the room the faces of so many old friends and colleagues.

Since leaving government I have been deeply involved in the development of an institute for public policy at Rice University in my hometown of Houston, Texas. Like all new endeavors, the Institute is looking for examples of excellence to emulate, and I can assure you that The Woodrow Wilson Center for International Scholars ranks high among them. I only hope that the Baker Institute will be half as successful as the Center has been in attracting our nation's most distinguished scholars and practitioners of public policy.

My subject tonight is Europe in the post-Cold War era and, in specific, an appropriate American response to the strategic, political, and economic changes that are (for better or for worse) still transforming the region that comprises the former Soviet bloc.

All of us can remember the euphoria we felt when the Berlin Wall fell and freedom surged, first through Central and Eastern

Europe and then into the heart of the Soviet Empire itself. It seemed for a moment as if Woodrow Wilson's great vision of a liberal international order, based on the shared values of democratic societies, might come to pass.

Those days seem long ago. Today, euphoria has been replaced by the somber realization that history—the history of human conflict and cruelty—has not, in fact ended.

In the former Yugoslavia, Europe has witnessed its worst human savagery and suffering since the end of World War II. The nightmare in Bosnia has revealed both the strength of ethnic animosity and the impotence of the international community in addressing it, prompting some pessimists to describe it as the model of future conflict throughout the former communist bloc.

In Russia, economic reform seems stalled, if not yet reversed, and, day-by-day, evidence of a more assertive, some say aggressive, Russian foreign policy towards its neighbors accumulates. There is, not surprisingly, already talk in the West of "losing" Russia. I believe that events in Moscow, like the war in Bosnia, represent only part of broader trends in Central and Eastern Europe and the former Soviet Union.

I am convinced that these trends, if not slowed, promise a continent far-removed from the Europe whole and free which seemed so close when the Cold War peacefully concluded.

#### POST-REVOLUTIONARY TRENDS IN THE FORMER SOVIET BLOC

Perhaps the most disturbing of these trends, and certainly the most costly in human terms, has been the rise of communal conflict throughout much of the former communist bloc.

In some places, conflict has boiled over into outright violence. This is true, not just in Bosnia, but also in Moldova, Georgia, Armenia, Azerbaijan, and Tajikistan. Elsewhere conflict simmers just below the surface, especially in Ukraine, with its large, restive, and increasingly militant Russian minority. And Russia itself is a country within which there are many ethnic, linguistic, and sectarian differences.

Also worrisome is an emerging pattern of setbacks for economic reform. The eclipse of reformers in Yeltsin's government, notably former Prime Minister Gaidar and Finance Minister Fyodorov, and their replacement by apparatchiks have parallels elsewhere. In Moldova, Belarus, and Ukraine, the forces of reform, never robust, are in retreat. In last month's parliamentary elections in Ukraine, for instance, reformers won only 35 of 338 seats. In contrast, over 100 former communists were elected. Not even Poland, one of Eastern Europe's free market successes, has proven immune. Even there, former communists have been able to capitalize on the hardships associated with economic reform for electoral gain—as they appear to have done in yesterday's elections in Hungary.

Simultaneous with this movement away from economic reform has been a trend towards political radicalism. Communist totalitarianism may have met defeat, but the victory of liberal democracy has been far from complete. Today, ideological struggle continues, but along a different front.

After fifty years of near silence in Europe, fascism has found its voice again—an ugly, menacing voice of anti-semitism, xenophobia, and authoritarianism. This development has been most striking in Russia, where Vladimir Zhirinovskiy's success in last December's election demonstrates the powerful appeal of reaction to the economically hard-pressed.

But Zhirinovskiy is not alone in his appeal, nor is Russia unique in its temptation. In Serbia, Slobodan Milosovic has already put much of Zhirinovskiy's theory into practice, prosecuting a war in the name of a Greater Serbia without consideration of basic human rights or international norms of behavior. Elsewhere in the region, there are those prepared to follow his and Zhirinovskiy's lead.

Even some Western Europeans, presumably far more sophisticated politically than their brethren to the East, have yielded to reactionary temptation, turning to the political extremism of neo-fascists in Italy and Germany or to the street violence of skinheads in Great Britain and elsewhere.

A final worrisome trend, now subject to intense debate in the United States and in Europe, is Russia's reassertion of its traditional sphere of influence. President Yeltsin and Foreign Minister Kozyrev have staked claim to a special Russian relationship with the states of the so-called "near abroad." As Russian military involvement in Georgia and Moldova already demonstrates, this relationship presumably includes the right to intervene in its neighbors' affairs.

Whatever Russia's intent, the nations around it, particularly those, like Ukraine, with sizable ethnic Russian minorities, are plainly apprehensive.

So are the Eastern European countries that have incurred Moscow's imperial yoke in the past. Russia's introduction of peacekeepers into Bosnia has so far marked a positive contribution to peace in that volatile region. It nevertheless raises concerns in the Balkans and elsewhere about the reemergence of a pan-Slavism that led, at least in part, to the outbreak of World War I in 1914.

#### LIBERALISM AND REACTION

All these trends, from the trend toward reversal of reform, to the rise of fascism to the risk—if not yet the reality, of a new Russian imperialism are interrelated. All, I believe, reflect a fundamental rejection of the principles of liberalism, principles first delineated in the works of Enlightenment theoreticians like Locke, Montesquieu, and Kant, and embodied in the modern societies of Western Europe and the United States.

Free enterprise, democratic government, civic identity based on voluntary association rather than communal solidarity, and the peaceful resolution of international disputes are all great liberal ideals. All today are under assault in Central and Eastern Europe and the former Soviet Union.

Whether the anti-liberal trends I have discussed represent a true counterrevolution, or simply temporary reverses understandable given the enormous tasks confronting reformers in the East, is unclear. Some observers have gone so far as to suggest that the Cold War itself marked an anomaly in European history, and that, with its conclusion, the traditional continental struggle between liberalism and reaction dating back to the 19th century will resume.

Clearly, the great Eastern debate over modernization continues. The division between Russia's Slavophiles and Westernizers, apparent at least since the time of Peter the Great, can be seen today in the contest between men like Zhirinovskiy and Gaidar, who possess not just different, but mutually exclusive, visions of their nation's nature and international role.

#### THE WESTERN (NON-)RESPONSE

The Western response to developments in the former communist bloc has been mixed at best, and marked, in the United States

and elsewhere, by near maniac-depressive swings between optimism and gloom. This is particularly true in the case of Russia, where opinion is sharply divided.

Some observers seem prepared to countenance any Russian backsliding at home or bellicosity abroad for fear of prompting a reaction from the Russian right. Many in the current Administration appear to fall into this camp.

Others, in contrast, seem ready to declare Russia already lost. Some members of my own political party have seized on the recent U.S.-Russian spy scandal to call, not just for a termination of American aid to Russia, but, at least by inference, for the creation of a new anti-Russian alliance.

In my opinion, the first point-of-view is naive, the second premature. Yet both, ironically, suffer from the same intellectual affliction: Russo-centrism.

This is not to deny the importance of Russia and developments there, not just for its neighbors, but for Western Europe and the United States.

Indeed, I will later argue that it is precisely this importance which makes it imperative for the West to maintain assistance to Russian reform and reformers.

But I believe it is also critical to recall that Poland, Hungary, and the Czech Republic, to name just three, possess importance to the West in their own right, as fellow democracies, diplomatic partners, and potential markets. Our policies towards them must be dictated by American interest, not by domestic Russian politics.

What the West needs, I submit, is a European approach to European problems, one that addresses unfolding events in Russia in a broader continental context. I believe that the West should pursue a four-part strategy towards Central and Eastern Europe and the former Soviet Union.

#### A WESTERN STRATEGY

First, the West must make irreversible our past progress on strategic arms control and non-proliferation.

Lost in today's headlines is a fact of extraordinary importance: tens of thousands of nuclear warheads, enough to destroy humanity several times over, remain in Russia, Belarus, and Ukraine.

Plainly, the United States should continue to monitor closely the dismantlement of Russian nuclear weapons pursuant to arms control agreements. As we have since 1991, we should support this effort with technical assistance. In addition, the United States and its allies must intensify pressure on Ukraine to meet all its commitments under agreements it negotiated and signed with us and other countries—commitments that the government of Ukraine has solemnly made, frequently reiterated, but not yet fulfilled.

Our willingness to compromise with Ukraine, rather than insist on full compliance with these commitments is why we have been on the receiving end of an ever-escalating series of demands for economic and security assistance.

Let anyone be tempted to forget, the missiles in Ukraine are aimed at Washington, not Moscow. This vital fact should outweigh any consideration of domestic politics and we should demand that Ukraine fulfill its two-year-old commitments to us.

But the West must worry about more than the nuclear weapons that remain in the former Soviet Union, dangerous as they are. We must also be concerned about the illicit export of unconventional arms, technology, and expertise from the former Soviet Union to parts unknown, or rather suspected: loca-

tions like Teheran, Tripoli, Pyongyang, or Baghdad. Given the profound economic hardship reigning in the former Soviet bloc, and particularly the extreme shortage of foreign exchange, the temptation to proliferate will be considerable.

But it must be resisted, if necessary with the reinforcement of Western sanctions against violators. With the Clinton Administration's decision to lift remaining COCOM restrictions on sensitive exports to the former Soviet Union, the risk of diversion of technologies has, in fact, increased. As we call for discipline on the part of the former Soviet Union, it is important that the United States and our allies meet the same test of responsibility.

Second, the West must reinvigorate the North Atlantic Treaty Organization. This begins with a refocused mission for NATO. Russia's military is in disrepair. Manpower is down to only a quarter of that of the former Soviet Union. Readiness is poor, with military exercises regularly cancelled for lack of ammunition or equipment.

And morale, as evidenced by a recent draft call in Moscow where only 5 percent of inductees turned up, is low. In short, though large in comparison to its neighbors, Russia's armed forces today, and for the foreseeable future, represent no conventional threat to Western Europe.

Nonetheless, the disappearance of an immediate threat to Western Europe should not lead to the demise of the West's premier political and security organization: NATO. I am convinced that NATO must still play a vital role in the future of European security. It is, quite simply, the world's foremost military alliance. There is simply no replacement for it on even the most distant of horizons.

The relative success of NATO's recent, if overdue, action in Bosnia demonstrates, I believe, its unique capability and credibility. Both should be put more aggressively to use in containing the Bosnian conflict from expanding into a general Balkan War that could draw in Albania, Greece, Hungary, or even Turkey.

Macedonia, in particular, remains a potential flashpoint, despite the presence of American and other observers. Highly vulnerable to possible Serbian aggression, it has also been, since February, the victim of an unwarranted Greek trade embargo.

Explicit warnings to anyone tempted toward adventurism in Macedonia, including the government in Belgrade, backed up, if necessary, by the deployment of substantial NATO forces, should be part of our approach to the Macedonian problems. So, too, must be a clear message to Athens from all its NATO and EU partners that its embargo of Macedonia, however popular domestically, runs the real risk of further destabilizing an already war-ravaged region and should be reversed.

Central to NATO's reinvigoration is expanding membership eastward. I believe that the Alliance should offer full membership to former Soviet bloc states that demonstrate a commitment to democracy, free markets, and responsible security policies. By so doing, NATO can extend powerful incentives for reform. In my opinion, Poland, Hungary, and the Czech Republic are ready for membership now. The Administration's "Partnership for Peace" is, at best, a half-hearted response—and last January's NATO Summit marked a missed historic opportunity. Broadening full Alliance membership will enhance security in Central and Eastern Europe as it did in Western Europe after World

War II, and send a message of Western resolve to would-be Russian imperialists.

Moreover, I am convinced that NATO membership can be expanded eastward without prompting an extreme and irreversible Russian reaction. True, Russia is on record as opposing full NATO membership for the Czech Republic, Hungary, and Poland, but Russia herself has also shown interest in some association with NATO. I believe that Russia, like the other former bloc states, should be offered full Alliance membership when and if it, too, meets the criteria I have mentioned. In the final analysis, however, expanding NATO membership must be NATO's decision. A Russian veto on this is simply unacceptable.

Third, the West should sustain support for reform in Central and Eastern Europe and the former Soviet Union.

It is crucial to remember that Russia has not yet been lost. Reform, though slowed, continues. The economic hardship being endured today by the Russian people should not obscure the remarkable strides they have made in just a few years. A new free economy may not have arrived, but the old command economy is clearly a thing of the past.

Already, more than 75 percent of Russian small business is in individual hands and more than 25 percent of the labor force works in the private sector.

Prices have been freed on all but 10 percent of goods. Inflation, though still unacceptably high, continues to decline. And, most importantly of all, Russia already possesses a dynamic entrepreneurial class.

Nor, we should remember, is Russia in any real sense the West's to lose. Russia remains a great power. It is a vast, populous nation with a rich culture and extraordinary economic potential. Russians, and Russians alone, will determine their country's future, for better or for worse.

That said, assistance to reform in Russia remains the West's best international investment, with potential returns, both political and economic, of historic magnitude. Western aid to Russia has never approached a fraction of the cost associated with deterring the Soviet Union. That aid, however, should be more narrowly focused on encouraging private sector development and promoting the institutions, such as political parties, that are preconditions to a civil society. Above all, Western donors and institutions like the International Monetary Fund must continue to remind Russia and others of an unpleasant economic truth: deferring reform will only delay the day of final reckoning. There can be no "therapy" without some "shock."

Equally vital, however, is a good faith effort by the West to open its markets to Eastern goods. Here, the record of the European Community has failed abysmally to match its rhetoric. Indeed, certain EU policies, particularly tariffs on key Eastern products such as steel and agricultural goods, have been positively punitive towards the East.

The urge to protect Western European producers, especially given the lingering recession on much of the continent, is understandable. Unemployment is high, growth feeble. Nevertheless, it would be truly tragic were Europe to pull down the Iron Curtain only to erect a trade wall between the "haves" of the West and the "have-nots" of the East. In this regard, Chancellor Kohl's recent call for a roll-back of tariffs against Eastern goods is a positive sign and one that the United States should encourage.

But we here in America must also go further to open our markets to trade with the

East. As a first step, we should stop protecting our own domestic producers of commodities, like uranium, which Russia needs to export to generate critical foreign exchange. We should also reach out to former communist bloc countries like Hungary, the Czech Republic, and Poland, to negotiate free trade agreements. Trade and investment between East and West can help ensure mutual security and shared prosperity in ways that massive armies or foreign assistance cannot.

The fourth and final element of a Western strategy for Central and Eastern Europe, and the former Soviet Union must be American leadership.

This does not mean that the United States should become Europe's policeman. We have fought three wars in Europe during this century—two hot ones and a cold one—and that is quite enough. Still, the United States is a European power, with enduring interests there, and we must act as one.

As it has for four decades, European unity remains in America's national interest.

We should look forward to the day when the United States can work with a united Europe as a full diplomatic, economic, and strategic partner.

That day, however, has not yet arrived. Even economic union, a far less daunting task than political unity, has proven more difficult than many European enthusiasts had predicted. "EC 92" has come and gone and the states of Western Europe still struggle with coordination. Monetary union remains as ephemeral as it has always been.

Diplomatic coordination has proven, if anything, even more difficult for the EU to achieve. Anyone who doubts the imperative of American leadership need only review the tragicomic history of Europe's "common policy" towards the former Yugoslavia.

#### SELECTIVE ENGAGEMENT

The end of the Cold War has created extraordinary freedom of action for the United States, in Europe and elsewhere. We no longer face a single overwhelming threat. We no longer confront a single global enemy. The decades of East-West confrontation, when every conflict, no matter how minor, could become a zero-sum contest between the two blocs, are, gratifyingly over. American engagement is no longer compulsory.

Instead, today the United States can afford to engage selectively. This selective engagement requires us to assess our interests and seek policies that are proportionate to them. We must choose the appropriate instrumentality, multilateral or unilateral to pursue those policies. And, above all, we should husband that most important of intangibles, our credibility, in the service of our national interests.

To be blunt, I believe that the Administration—by missteps in Haiti and Somalia, a diminution of American leadership within NATO, and a "stop-and-go" policy towards Bosnia that can only charitably be labeled "confused"—have called that credibility into doubt.

In foreign policy, far more than in domestic policy, words are the currency of the realm.

If promises to allies are kept and threats against enemies carried out, our currency will rise in value. But if promises are betrayed, threats are unfulfilled, and rhetoric and reality don't match, then the currency of our foreign relations will be dangerously defaulted. And right now, the run against the dollar pales in comparison to the devaluation that has taken place in our foreign relations.

In short, the Administration has indulged in Wilsonian rhetoric without backing it up with Wilsonian resolve. As Michael Mandelbaum, foreign policy expert and, ironically, advisor to the Clinton campaign in 1992, puts it succinctly: "If you're not going to pull the trigger, don't point the gun."

The impression today is inescapable: the nation's leadership is fundamentally uncomfortable with the concept of American power, which of course is a *sine qua non* of its proper exercise. In the wake of the Cold War, the scope for that exercise is without parallel. The United States finds itself in a unique and ironic set of circumstances. Without emergencies as the world's sole superpower, the United States can do so much that we are tempted to attempt everything—or do nothing at all.

It is clear that the United States must avoid temptation and their attendant false choices. If we are to protect our interest and promote our values, as I believe we must, then we must get beyond empty either/or's and engage selectively. Fundamentally, the question is not if the United States should remain engaged in world affairs, but when, where, and how.

#### EMBRACING UNCERTAINTY

This is nowhere truer than in Central and Eastern Europe and the former Soviet Union, a region where history is still being made at a revolutionary pace. The strategy I have sketched tonight—a strategy of selective engagement—embraces the uncertainty of the current moment around the world, but especially in Europe.

No simple analysis will yield the truth about a region as vast, complex, and rich with history as the former communist bloc. And no single policy will permit the West to meet the challenges of the post-Cold War Europe.

Still, I believe that the approach which I have outlined maximizes opportunity and minimizes risk not just for the West, but for the nations of the former Soviet bloc themselves. It reinforces liberalization where possible but prepares against the eventuality of reaction. It hedges our strategic bets. It is a strategy, in short, that combines both hope and realism.

#### CONCLUSION

If my remarks this evening lack the optimism of a few years ago or the pessimism we hear so much nowadays, it is for a reason. Today, we stand neither on the verge of the millennium nor on the eve of Armageddon.

Indeed, we are, on balance, rather further from Armageddon than we were just a few years ago, when Europe was still divided by barbed wire and armies bristling with weapons.

And lest we forget it, hundreds of millions of individuals today throughout the former communist bloc have a chance they did not just five years ago: an opportunity to live free and prosperous lives in a world made safer for them and their children. Woodrow Wilson's dream may not yet be universally realized, but it is enjoyed today by more people than at any time in human history.

We are ending human history's most brutal century on a note of hope, however tentative. That we and the world do so is attributable above all, I believe, to American leadership on the international stage. And that leadership remains as vital today as it ever was.

No, Russia is not yet lost. Nor, whatever happens there, is Europe. The continent is not ready—yet—to repeat its tragic history of the 1930's and '40s.

Nonetheless, I do believe that the United States and its allies today run the real risk of losing a unique historical opportunity to shape Europe in a way that will protect our interests and promote our values for years, and, indeed, decades to come.

Mr. WALLOP addressed the Chair.  
The PRESIDING OFFICER. The Senator from Wyoming.

#### SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

Mr. WALLOP. Madam President, I ask unanimous consent that the pending amendment be set aside so that I might call up an amendment of my own.

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

#### AMENDMENT NO. 1715

(Purpose: To require a review by the Congress of any regulations issued under the authority of this legislation)

Mr. WALLOP. Madam President, I would like to call up amendment No. 1715.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:  
The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1715.

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

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:  
At the end of the bill, add the following language:

#### SECTION 1.

(a) Any rule proposed pursuant to authority under this Act shall during the period after publication and before the rule becomes effective be subject to review by Congress as provided in section 2.

(b) DISPOSAL REQUIRED.—If a rule is reviewed pursuant to section 2, the rule shall not take effect unless a review resolution is disposed of as required under section 2(b)(4) and section 2(b)(5).

(c) If Congress adjourns sine die at the end of a Congress prior to disposition of a Review Resolution as provided in section 2, the regulation will not become final.

#### SEC. 2. CONGRESSIONAL REVIEW.

(a) PETITION OF REVIEW.—If one-fifth of either House, duly chosen and sworn, sign a petition requesting congressional review of a regulation described in section 1, the Congress shall consider a joint resolution (referred to as a "review resolution") as provided in subsection (b).

(b) CONGRESSIONAL CONSIDERATION OF REVIEW RESOLUTION.—

(1) TERMS OF THE RESOLUTION.—For the purposes of subsection (a), the term "review resolution" means a joint resolution that—

(A) is introduced within the 2-day period beginning on the date on which a petition is filed pursuant to subsection (a);

(B) does not have a preamble;

(C) states after the resolving clause "That Congress disapproves and repeals the regulations promulgated on XX", the blank space being filled in with the date on which the regulations were promulgated and a description of the regulation; and

(D) is entitled a "Joint resolution disapproving the regulations promulgated on XX", on the blank space being filled with the date and agency.

(2) REFERRAL.—(A) A review resolution that is introduced in the House of Representatives shall be referred to the committee of jurisdiction.

(B) A review resolution that is introduced in the Senate shall be referred to the committee of jurisdiction.

(3) DISCHARGE.—If the committee to which a review resolution is referred has not reported the resolution (or an identical resolution) by the end of the 5-day period beginning on the date on which the petition is filed, such committee shall, at the end of that period, be discharged from further consideration of the resolution, and the resolution shall be placed on the appropriate calendar of the House of Representatives or the Senate, as the case may be.

(4) CONSIDERATION.—(A)(i) On or after the first day after the date on which the committee to which a review resolution is referred has reported, or has been discharged (under paragraph (3)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any member of the House of Representatives or the Senate, respectively, to move to proceed to the consideration of the resolution (but only on the date after the calendar day on which the member announces to the House concerned the member's intention to do so).

(ii) All points of order against a review resolution (and against consideration of the resolution) are waived.

(iii)(I) A motion to proceed to the consideration of a review resolution is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable.

(II) A motion described in subclause (I) is not subject to amendment, to a motion to postpone consideration of the resolution, or to a motion to proceed to the consideration of other business.

(III) A motion to reconsider the vote by which a motion described in subclause (I) is agreed to or not agreed to shall not be in order.

(IV) If a motion described in subclause (I) is agreed to, the House of Representatives or the Senate, as the case may be, shall immediately proceed to consideration of the review resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the House of Representatives or the Senate, as the case may be, until disposed of.

(B)(i) Debate on a review resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 5 hours, which shall be divided equally between those favoring and those opposing the resolution.

(ii) An amendment to a review resolution is not in order.

(iii) A motion further to limit debate on a review resolution is in order and not debatable.

(iv) A motion to postpone consideration of a review resolution, a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

(v) A motion to reconsider the vote by which a review resolution is agreed to or not agreed to is not in order.

(C) Immediately following the conclusion of the debate on a review resolution and a single quorum call at the conclusion of the debate if requested in accordance with the

rules of the House of Representatives or the Senate, as the case may be, the vote on final passage of the resolution shall occur.

(D) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or of the Senate, as the case may be, to the procedure relating to a review resolution shall be decided without debate.

(5) CONSIDERATION BY OTHER HOUSE.—(A) If, before the passage by one House of a review resolution that was introduced in that House, that House receives from the other House a review resolution—

(i) the resolution of the other House shall not be referred to a committee and may not be considered in the House that receives it otherwise than on final passage under clause (ii)(II); and

(ii)(I) the procedure in the House that receives such a resolution with respect to such a resolution that was introduced in that House shall be the same as if no resolution had been received from the other House; but

(II) the vote on final passage shall be on the resolution of the other House.

(B) Upon disposition of a review resolution that is received by one House from the other House, it shall no longer be in order to consider such a resolution that was introduced in the receiving House.

(6) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a review resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(B) with full recognition of the constitution right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

Mr. WALLOP. Madam President, I ask unanimous consent that that amendment be temporarily set aside so that I might call up and qualify another amendment.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Might I inquire of the Senator the nature of his amendments, so we have a sense of what they are.

Mr. WALLOP. Yes. I think the Senator knows what they are. One of them calls for a congressional review of regulations issued under the authority.

Mr. BAUCUS. Is that the first amendment?

Mr. WALLOP. That is the first one.

The second one is to make the provisions of the Act a matter of State compliance, rather than Federal compliance.

Mr. BAUCUS. I thank the Senator.

The PRESIDING OFFICER. Without objection, amendment No. 1715 is set aside.

#### AMENDMENT NO. 1721

(Purpose: To permit each State to determine the drinking water regulations that shall apply in the State)

Mr. WALLOP. Madam President, I call up amendment No. 1721.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. WALLOP] proposes an amendment numbered 1721.

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

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

The amendment is as follows:

On page 139, strike lines 2 through 6 and insert the following:

"that the State determines are appropriate or applicable in the State;"

On page 143, after line 23, insert the following new subsection:

"(i) APPLICABILITY OF PRIMARY DRINKING WATER REGULATIONS.—Section 1411 (42 U.S.C. 300g) is amended by inserting 'to the extent that the State determines that the regulations are appropriate or applicable' after 'in each State'.

Mr. WALLOP. Madam President, I will, at the convenience of the managers, be prepared to debate them. I was told we needed to qualify them by 3. I thank them for their consideration. I yield the floor.

Mr. SMITH addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, I ask unanimous consent that the pending amendment be laid aside and that I be allowed to offer an amendment listed by Senator GREGG which is at the desk.

The PRESIDING OFFICER. Is there objection?

Mr. BAUCUS. Might the Chair inform the Senate how many amendments we now have that are being laid aside?

The PRESIDING OFFICER. There are currently four amendments that have been set aside.

Mr. BAUCUS. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

#### AMENDMENT NO. 1728

(Purpose: To exempt from the labor standards requirements assistance derived from repayments to the State loan fund)

Mr. SMITH. Madam President, I send an amendment to the desk on behalf of Senator GREGG and myself and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection the pending amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself, and Mr. GREGG, proposes an amendment numbered 1728.

Mr. SMITH. Madam 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 22, line 17, insert "but not" before "including".

Mr. SMITH. Madam President, I inquire of the Chair or managers whether or not they wish to have this amend-

ment debated at this time or just offered?

Mr. BAUCUS. Madam President, it is my hope the Senator will press his amendment now so we can deal with it at the moment.

Mr. SMITH. I thank my colleague. I am prepared to do that.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH. Madam President, I rise today to offer an amendment on behalf of myself and Senator GREGG to the Safe Drinking Water Act reauthorization that will free States from the Davis-Bacon requirements when the Federal commitment to State revolving funds, better known as SRF's, has ended in the fiscal year 2000. This amendment will also free the States from the Davis-Bacon requirements when these funds are relented by States from SRF under this act.

This is a new SRF program established under the Safe Drinking Water Act and the bill authorizes seed money to set up revolving loan funds. Loans are repaid and then funds are reloaned. Current practice, as is the case in the Clean Water Act, has been to apply Davis-Bacon only to the initial pool of money receiving a Federal contribution.

This bill as it is now written applies Davis-Bacon to subsequent loans, future loans, made out of the revolving funds 5, 10, 15, 20 years later, after the Federal Government has stopped contributing any funds. This far exceeds current Davis-Bacon requirements. No matter how you voted on the Faircloth amendment yesterday, this exceeds the current requirement for Davis-Bacon.

Revolving funds are administered by State agencies. They are matched with State funds. They are loans based on State and local assessments of need. Obviously, over time these revolving funds, SRF's, become State money more and more, and Federal money less and less. That is the whole purpose of the SRF's. So money repaid into SRF's, all of those dollars, are State dollars.

As an obvious example of this written right into the bill, States can decide whether or not to forgive loans to disadvantaged communities. They can make that decision. It does not make sense to apply Davis-Bacon to a subsequent loan that was made possible solely because the State collected a loan repayment it could have forgiven.

The bill contains a provision which essentially expands the Davis-Bacon coverage to all drinking water projects funded by the SRF's created in this bill—expands. This Davis-Bacon provision amounts to just one more Federal unfunded mandate on local communities. After the year 2000, the SRF will be capitalized solely by repayments into the loan fund.

So the Davis-Bacon provision currently in this bill would apply the law's

requirements, not just for the first few years of the program, not just when the Federal Government is making a financial contribution—that is bad enough for those of us who do not like Davis-Bacon—but it also applies when the SRF is fully capitalized with States' funds.

This language is very significant. It is an unprecedented expansion of the Davis-Bacon Act, which will eventually place the full burden of the associated inflation costs on the States. This is very, very unfair. It is an unprecedented expansion which should not be allowed. It is not in any way justified under the whole concept of Davis-Bacon, whether you support the existing concept or not.

A study released by the GAO estimates that the Davis-Bacon Act raises the cost of Federal construction by an average of anywhere from 5 to 15 percent—a big range, but there are a lot of numbers out there in terms of what this means. A University of Oregon study estimated the inflated costs in rural areas, like most of my home State of New Hampshire, to be as high as 38 percent. And the Davis-Bacon Act currently impacts States and localities because it often applies even when the Federal Government makes only a nominal contribution and the project is primarily funded by the State and local authorities and by the private sector.

Where do we get off having Davis-Bacon apply? We know it applies to Federal, unfortunately, but where do we get off having it apply to State and local community money? It is simply unfair. The inflated costs and other problems associated with Davis-Bacon can virtually nullify the Federal Government's assistance—and it does frequently. The language in this bill imposes this type of burden on the States, but it also goes a step further by applying Davis-Bacon indefinitely, even when Federal dollars comprise no part of the SRF's.

So we are now going to look into the future when no Federal money is being placed into the SRF, yet they are going to be governed by the Davis-Bacon provisions. That is wrong. It is unfair, and it was not the intention of the statute.

I do not think there is a Member in this body who is opposed to the overall goal of safe drinking water—I hope not. But what concerns many of us is how we reach this goal.

Supporters of this legislation have spoken on the additional flexibility that the bill provides. While this may be true in some areas, the Davis-Bacon provision in this legislation is entirely contrary to the whole intent of the statute. In my State and that of Senator GREGG, the State of New Hampshire, the State legislature unanimously repealed the prevailing wage law in 1985 by a voice vote in the House and by a 17-to-6 vote in the New Hampshire Senate. The State legislature in

New Hampshire as well as 17 other States has clearly stated they do not want to pay these inflated costs, especially on environmental projects like this. They want to put the money into cleaning up the environment, in this case safe drinking water.

If this bill is truly flexible and intent on the goal of safe drinking water, it would not have an unfunded mandate that shifts the purpose of the bill from the purity of our water to a labor issue. That is what we are talking about here, a labor issue. It is a labor issue, ironically, that costs jobs and takes money away from the cleanup.

The bill authorizes \$600 million in fiscal year 1994 and \$1 billion per year over fiscal year 1995 to the year 2000, or \$6.5 billion total. Davis-Bacon costs, depending on whose estimates you use—if you use as little as 1.5 percent of the total, that is \$100 million. It could go, if you use the GAO estimates, to as high as \$1 billion.

So \$100 million to \$1 billion—that is a big range. You pick a number, and whatever number you pick that money is not going to be used to make drinking water safer. It is not going to be used for that at all. It is going to be used to pay more to people to do the work than the prevailing wage rate is. That is what it is going to do. And it will cost people, especially in urban areas, jobs.

The result: less capital improvement, less safe drinking water, more money. It does not sound like a good deal to this Senator.

We rejected the Faircloth amendment yesterday. The Senate spoke very clearly on that. I happen to agree with Senator FAIRCLOTH, but the issue now is far beyond the Faircloth amendment. I want my colleagues to understand that. This amendment takes Davis-Bacon well beyond that and into the realm of the States and the localities who in good faith contributed money to this fund which then becomes self-sustaining so those dollars can be used to take Federal dollars out of the equation down the road. And what are we doing? Imposing the long arm of Government into those SRF's with the Davis-Bacon provision. It is wrong.

Let me conclude by saying this. My colleagues should be very clearly aware that the SRF provisions in this bill are not just a traditional application of Davis-Bacon requirements on Federal construction projects. That is not what we are talking about here, but an expansion of Davis-Bacon requirements to any assistance derived from repayments through the SRF. This represents an entirely new application of Davis-Bacon to construction work not directly funded by Federal money.

So in voting on this amendment, you must ask yourself: Do you want the Federal Government to reach into these SRF funds and dictate the prevailing wage on State and local money?

State and local money, not Federal money.

Whether you like Davis-Bacon in its current form or not, Senators should at least be able to support this amendment because it stops an unprecedented, unintended—unintended—expansion of the law to the States. Davis-Bacon was not intended to expand to State moneys. The Federal Government should not be in the business of telling States how they must spend their scarce resources. Not only that, they should not be in the business of telling States how much money to pay to clean up a particular environmental problem—in this case, safe drinking water—when that money could be used better to provide for the actual cleanup rather than for labor costs that are unnecessary.

I urge my colleagues to support this amendment, to look at it, to review it, not be prejudiced by previous debate, but look at the essence of this amendment and what it does.

Madam President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Madam President, I agree with the Senator from New Hampshire. I think the point he made is that in the revolving fund, pretty soon they are entirely State funds, there are no Federal funds in there. What he is objecting to is that a Federal law requiring a higher wage than is the normal wage right in the vicinity must be paid for any work that is done under the revolving fund. I share with him that is not appropriate.

I think that the local water company, once they get some funds from the revolving fund, should be able to put it out to bid and get the lowest bid. But that is not true under the law, under the provision that is now in this bill.

I might say that applying Davis-Bacon to this fund is new. It also is true that the State revolving fund itself is new, but applying the Davis-Bacon to the Safe Drinking Water Act is a new proposal. It was not in the prior law.

So I think the Senator's point is well made, and I congratulate him for it.

The PRESIDING OFFICER. Who seeks recognition?

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Madam President, we had essentially the same issue before us yesterday. It is a little bit different. But it is essentially the same issue. The Senate voted overwhelmingly against the amendment to delete Davis-Bacon from the Safe Drinking

Water Act State revolving fund. I forgot the vote, but the Senate rejected this amendment—not exactly this amendment, but a similar amendment yesterday. This is basically the same issue.

The question is, should Davis-Bacon apply not only to loans from the State revolving loan fund in the first instance, but also to loans from the State revolving loan fund that are loaned back out of the fund subsequently to other communities.

There has been some illusion on the floor that somehow these funds become State funds. They do not. It is still principally Federal money. In fact, by and large, it is always—about 80 percent—Federal funds and only about 20 percent State because it is a Federal 80-percent grant to the State revolving loan fund and 20 percent matched by the States.

From that grant, States then loan funds out to communities to install treatment facilities through the revolving loan fund under the Safe Drinking Water Act. Every year, the process is the same. Every year, if this legislation is enacted, Uncle Sam will contribute 80 percent more to the State revolving loan fund, and every year the State will contribute its match of 20 percent.

In the first year, the State revolving loan fund will be about \$600 million, 80 percent Federal, 20 percent State. Then the authorization next year under the bill is up to \$1 billion and each year thereafter. Each year there is essentially 80 percent contribution of Federal dollars, 20 percent matched by the States.

That is why I say this is essentially the same issue because we are talking about loans from the State revolving loan fund which is, by and large, 80 percent Federal dollars and 20 percent State.

There are all kinds of studies on this issue and the studies go in all directions. Some of the proponents of this amendment say, "Gee, prevailing wage under Davis-Bacon is wrong. It is unfair because it is too costly to communities to pay prevailing wage."

There are a lot of studies that show just the opposite, Madam President; that is, the prevailing wage provisions tend to lower costs in many instances because there are fewer cost overruns, there are fewer stoppages, fewer slowdowns, higher quality of construction. So it is not clear.

As the Senator from Massachusetts [Senator KENNEDY] made the argument quite eloquently yesterday—we are not talking about a lot of dollars to the ordinary working men and women who get paid prevailing wage, which is not high. It is not glamorous; it is not massive. These are not high wages. These are ordinary wages paid to ordinary people. I do not think that we in the Congress today—certainly we in the

Senate today—should break suddenly and say, "OK, these payments out of the Safe Drinking Water Act revolving loan fund should not be according to prevailing wages." I think it should.

It is for those reasons I urge the Senate to reconfirm the vote we did yesterday. It is not exactly the same amendment, but for all intents and purposes, it is the same. I urge us to continue the same vote and disapprove this amendment.

Mr. SMITH. Will the chairman yield to me briefly for a response?

Mr. BAUCUS. Sure.

Mr. SMITH. I know there are other Senators who want to offer amendments. I will be brief. I will say to the chairman, with all due respect, it is not a reconfirmation of the Faircloth vote. It is quite different. It does go far beyond the existing Davis-Bacon.

The chairman has admitted at least—I do not agree with his numbers on the other 80 percent—he has at least admitted 20 percent of the funds minimally are State funds. So I do not know how you can justify, even on that basis, that 20 percent being under the restrictions of Davis-Bacon.

I think, finally, even the Federal dollars that are in the fund that are provided to the States, they are provided so that the States can do the best job that they can to do the environmental work that needs to be done; in this case, to clean up drinking water. And we are tying their hands by saying to them you have to pay more money for wages to do that than what you have to pay. That is not good for the environment certainly. It certainly is not going to help clean up the water and it is certainly not good for the taxpayers of America.

So I think a vote in favor of the Smith amendment is a vote for the taxpayers and a vote for environmental cleanup. Let us keep the record straight on that.

Mr. BAUCUS. Madam President, one point I want to make regarding the provisions in the committee bill. Applying prevailing wage to projects as a consequence of loans out of the State revolving loan fund under the Safe Drinking Water Act is entirely consistent with the provisions that currently apply under another revolving loan fund, the Clean Water Act State revolving loan fund.

In fact, we in the committee addressed this very issue under the Clean Water Act for loans to communities for sewage wastewater treatment plants. We decided in the committee that the prevailing wage should apply in all cases. I just think for the sake of consistency that we should apply the same principle today. Again, the committee has voted on this.

The committee, frankly, I might add, Madam President, voted this bill out unanimously, which included provisions that prevailing wage would be provided in all cases.

Basically it comes down to this: We in the Senate just should make a clear decision: Does Davis-Bacon apply or does it not apply? If it does apply, it applies. If it does not apply, it should not apply. We in the Senate have stated very clearly, a significant majority has stated that Davis-Bacon should apply to Federal projects. This is a Federal project. This is a Federal project because at least 80 percent of the funds loaned out are Federal.

I think that we should affirm our earlier position, and I urge the Senate to do so; to disapprove the amendment offered by the Senator from New Hampshire.

The PRESIDING OFFICER. Who seeks recognition?

#### AMENDMENT NO. 1729

(Purpose: To propose 1st degree amendment to require Federal agencies to prepare private property taking impact analyses, and for other purposes)

Mr. DOLE. Madam President, is there an amendment pending?

The PRESIDING OFFICER. There is an amendment pending.

Mr. DOLE. I ask unanimous consent that the amendment be temporarily laid aside, and I send an amendment to the desk.

The PRESIDING OFFICER. Without objection, the amendment is set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE], for himself, Mr. HEFLIN, Mr. MCCONNELL, Mr. PRESSLER, Mr. BURNS, Mr. BROWN, Mr. HATCH, Mr. BOND, Mr. GORTON, Mr. KEMPTHORNE, Mr. GRAMM, Mrs. HUTCHISON, and Mr. CRAIG, proposes an amendment numbered 1729.

Mr. DOLE. Madam 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 138, insert between lines 16 and 17 the following new section:

#### SEC. 16. PRIVATE PROPERTY RIGHTS.

(a) SHORT TITLE.—This section may be cited as the "Private Property Rights Act of 1994".

(b) FINDINGS.—The Congress finds that—

(1) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the Constitution by the Fifth Amendment and made applicable to the States by the Fourteenth Amendment; and

(2) Federal agencies should take into consideration the impact of Governmental actions on the use and ownership of private property.

(c) PURPOSE.—The Congress, recognizing the important role that the use and ownership of private property plays in ensuring the economic and social well-being of the Nation, declares that it is the policy of the Federal Government to use all practicable means and measures to minimize takings of private property by the Federal Government.

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

(1) the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and—

(A) includes the United States Postal Service; and

(B) does not include the General Accounting Office; and

(2) the term "taking of private property" means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

#### (e) PRIVATE PROPERTY TAKING IMPACT ANALYSIS.—

(1) IN GENERAL.—The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this section; and

(B) all agencies of the Federal Government shall submit a certification to the Attorney General of the United States that a private property taking impact analysis has been completed before issuing or promulgating any policy, regulation, proposal, recommendation (including any recommendation or report on proposal for legislation), or related agency action which could result in a taking or diminution of use or value of private property.

(2) CONTENT OF ANALYSIS.—A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of whether a taking of private property shall occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) the effect of the policy, regulation, proposal, recommendation, or related agency action on the use or value of private property, including an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action requires compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would lessen the adverse effects on the use or value of private property;

(E) an estimate of the cost of the Federal Government if the Government is required to compensate a private property owner; and

(F) an estimate of the reduction in use or value of any affected private property as a result of such policy, regulation, proposal, recommendation, or related agency action.

(3) PUBLIC AVAILABILITY OF ANALYSIS.—An agency shall—

(A) make each private property taking impact analysis available to the public; and

(B) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(4) PRESUMPTIONS IN PROCEEDINGS.—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the cost, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(A) such analysis was completed 5 years or more before the date of such action or proceeding; and

(B) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

(f) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) limit any right remedy, or bar any claim of any person relating to such person's

property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages.

(g) **STATUTE OF LIMITATIONS.**—No action may be filed in a court of the United States to enforce the provisions of this section on or after the date occurring 6 years after the date of the submission of the certification of the applicable private property taking impact analysis with the Attorney General.

(h) **EFFECTIVE DATE.**—The provisions of this section shall take effect 120 days after the date of the enactment of this Act.

Mr. DOLE. We are not going to debate this amendment at this time. It is the so-called takings amendment in which I know a number of Members on each side have an interest. And this just protects me; so I have offered the amendment prior to 3 o'clock. I understand we have worked out some agreement. There will be two second-degree amendments.

Mr. BAUCUS. Right.

Mr. DOLE. I thank the managers. I yield the floor.

Mr. BAUCUS. Madam President, I thank the Senator, too, for being accommodating in working this out. We have worked out an understanding that three amendments will be laid down, two second-degree amendments, one offered by either Senator MITCHELL or his designee and, pending disposition of that, the Senator will offer his second second-degree amendment, so essentially depending on how the votes come out—

Mr. DOLE. One way to shorten that would be to accept the amendment I sent up.

Mr. BAUCUS. I could think of other ways to shorten it, too.

AMENDMENT NO. 1730

(Purpose: To exempt contracts entered into by the United States or District of Columbia for construction, alteration, or repair work that is performed in disadvantaged communities and that is necessary to comply with the Safe Drinking Water Act from the requirements of the Davis-Bacon Act)

The PRESIDING OFFICER. Who seeks recognition?

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. SIMPSON. I thought that was an excellent suggestion parliamentary wise. Hopefully, that will be the same with mine, but I see it is not. Therefore, I send an amendment to the desk and ask it be read.

The PRESIDING OFFICER. Without objection, the pending amendment will be set aside. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming, [Mr. SIMPSON] proposes an amendment numbered 1730.

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

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

The amendment is as follows:

At the appropriate place in the bill, insert the following new section:

SEC. . EXEMPTION OF CERTAIN CONTRACTS FROM REQUIREMENTS OF THE DAVIS-BACON ACT.

Notwithstanding any other provision of law, the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; 40 U.S.C. 276 et seq) shall not apply to a contract entered into by the United States or District of Columbia for construction, alteration, or repair work that—

(1) is performed in a disadvantaged community (as defined by the State in which the disadvantaged community is located) in a State; and

(2) is necessary to comply with the requirements of title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act; 42 U.S.C. 300f et seq.).

Mr. SIMPSON. The managers are well aware of this amendment, and if someone should come to the floor during my remarks, I will certainly yield to those persons so that they might submit amendments which must be in before 3 o'clock. With that, unless the managers have some different view, I will just make brief remarks.

Mr. BAUCUS. Madam President, the Senator has made a good suggestion. As far as we are concerned, he should proceed.

Mr. SIMPSON. Madam President, I have heard the phrase used in legislation called fine tuning. It sometimes can be overdone, but I think this is a modest change in some of the requirements of the Davis-Bacon law as it relates to the Safe Drinking Water Act.

What this amendment does is exempt only disadvantaged areas as are defined by the States from the prevailing—which, of course, are always union—wages as contained in Davis-Bacon. The EPA tells us that it will cost small, disadvantaged communities nearly \$3 billion to comply with current Federal drinking water regs, and another \$20 billion to repair, replace, and expand the current drinking water infrastructure to meet future needs. Davis-Bacon requirements only increase, of course, the financial burden.

I have heard the debate. This is not about Davis-Bacon in its own raw skeleton form. This actually affects the smaller communities. It keeps the smaller contractors from competing. In addition, it increases the cost of water systems for disadvantaged communities.

Remember, this does not affect anybody but a disadvantaged community as defined by the States under this bill. And I want to commend the managers, Senator BAUCUS and Senator CHAFEE, for their fine work to date with regard to the efforts to accommodate so many of us from different regions of the country. That has been truly exemplary, and I thank them and deeply appreciate it.

But this amendment is simply an attempt to level the playing field for contractors in small communities that

simply cannot afford to meet expensive safe drinking water requirements and principally, of course, includes communities in rural and also in urban locations.

When it comes to rural areas, anyway you look at it, Davis-Bacon is often a raw deal. And the more rural you get, the more raw it gets. The act is failing miserably when it comes to preserving jobs for local rural communities. In fact, contractors on public projects are much more likely to come from outside the community than they are from within, and the culprit is Davis-Bacon. It is about wages. It is about rural sections of the country. Wages in the rural sections are not as high as wages in the urban sections of the country. There are good reasons for that. So I think it is senseless for the Government to be paying the Denver union wage rate for a project in Wamsutter, WY. It is not appropriate. Not only does Davis-Bacon raise wages, it makes it more difficult for local firms to compete.

According to a 1982 report by the Department of Economics at Oregon State University, and I quote, "Davis-Bacon increases the cost of public non-residential buildings in rural areas." That will also be true for public drinking water system construction costs. The report shows how construction costs in rural areas are as much as 40 percent higher than in other locations thanks to Davis-Bacon. Davis-Bacon illustrates well the plight of rural localities in trying to spur economic activity, and it is certainly one reason why the deck is stacked against us.

In this situation, recall, please, that it is only to the disadvantaged areas. I might add that minority contractors have told us that, and I quote now from the National Association of Minority Contractors—Minority Contractors:

Davis-Bacon is poison to minority contractors. It has a terrible effect on minority employment. Davis-Bacon stifles the introduction of minority laborers into the construction industry. And, it is clear that the requirements of Davis-Bacon serve to discourage fair minority participation in the Federal construction market.

Mr. CHAFEE. Madam President, I wonder if the Senator will yield for one question here?

Mr. SIMPSON. I would yield for a question.

Mr. CHAFEE. I wonder if the Senator would agree that one of the problems with Davis-Bacon is not just the additional cost but Davis-Bacon is a great favor to the large construction companies. They have dealt with it. They are used to it. They have these jobs. But Davis-Bacon is poison to the small contractor. He cannot bid on the job because he does not have that history of having paid the prevailing wage within the area—the so-called prevailing wage, which we all know is a synonym for the union wage.

Am I not correct in saying that one of the people who loses out because of

Davis-Bacon requirements is the small contractor?

Mr. SIMPSON. Madam President, my friend from Rhode Island is saying it as crisply as possible. Indeed, those are the people most affected. The people we try to affect the least are the most affected by Davis-Bacon.

Let me just conclude that our party met in Philadelphia in conference several weeks ago. The topic of inner-city job creation came up. And we were told by persons in Philadelphia that they are losing 1,000 jobs a month.

Now, the mayor of that city, Ed Rendell, a Democrat, a very able and very impressive man—at least to me he is—has been working on it. And it may startle some to know that his principal job to do something for his city is to target a portion of Federal procurement to businesses situated in distressed areas or disadvantaged areas. If we want to make the mayor's dream come true, we should get rid of Davis-Bacon.

For too long, cities have operated on the premise that crime, welfare, and drugs are the cause of their problems. These social problems are actually symptoms which are directly related to an eroding economic base. We need to start hearing that one in Washington and help promote policies which promote commercial activity and job creation in our inner cities, rural fringes and, for that matter, the entire country.

I would also address the issue of quality. Many who support this law give credit to Davis-Bacon for creating higher standards of quality on construction projects. This is a myth that was pretty effectively shattered this past winter in our Nation's Capital. I ask my colleagues to recall how only months ago this city was shut down for several days because of a drinking water facility disaster. I have since learned that this facility was constructed under Davis-Bacon requirements. Enough said. The structure collapsed downtown. Davis-Bacon on that one too.

Davis-Bacon has been harshly criticized by most rural and inner-city business groups. Those include, the U.S. Hispanic Chamber of Commerce, National Center for Neighborhood Enterprise, National Association of Counties, National League of Cities, National School Boards Association, National Association of House and Redevelopment Officials, National Taxpayers Union, and the American Farm Bureau Federation.

I would argue that this amendment does not go nearly far enough, and I have always believed that an outright repeal is really the best way of dealing with Davis-Bacon. The law as a whole has helped to severely weaken employment in this sluggish economy by increasing costs.

The Congressional Budget Office has told us on more than one occasion that

Davis-Bacon has an inflationary effect on private construction costs. And if you are still not satisfied, the Government Accounting Office [GAO] has called for a complete repeal of Davis-Bacon—because we waste a billion bucks each year as a result of this law.

While I would concur with the GAO's conclusion, my amendment does not even come close to repeal or attempt it. I think it is important to point out that this amendment would only affect—at a maximum—30 percent of all safe drinking water contracts because only 30 percent of the revolving loan fund is available for loan forgiveness to disadvantaged communities. So the other 70 percent of the funding would still be open to all Davis-Bacon requirements.

This is a fairness issue. Why should we penalize those communities that need the financial assistance most? If we want to give them more bang for the buck, we should exempt them from Davis-Bacon requirements as another means of financial assistance. Seventy percent of the safe drinking water compliance costs will be incurred by disadvantaged small communities which account for 10 percent of the population. These communities need our help.

So, with that in mind, I would expect that each and every Senator may find it appropriate to support this reasonable and modest attempt to induce some economic stimulus into our most distressed rural and urban communities.

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

I had an amendment I would like to get in. It will just take a minute, if the Senator will yield.

Mr. SIMPSON. Madam President, I yield to the Senator from Ohio.

Mr. GLENN. Thank you very much.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Thank you very much, Madam President.

Madam President, I rise to offer an amendment to elevate EPA to Cabinet-level status.

This amendment passed the Senate just over a year ago as a free-standing bill—S. 171, the Department of Environmental Protection Act. That legislation passed the Senate by a vote of 79 to 15. Unfortunately, the House has failed to pass a counterpart bill, so we have not been able to go to conference. My hope is that by attaching this amendment to Safe Drinking Water Act reauthorization, we will be able to conference a bill and enact it this year.

I would note that this amendment incorporates S. 171 as passed and amended, so it includes all amendments, except one, that were offered and agreed to last year—amendments from Members from both sides of the aisle. The only difference between this amendment and S. 171 as passed is that I have

dropped section 123—the Johnston risk assessment provision. I have dropped this provision because a Johnston-Baucus compromise on risk assessment has already been debated and will be adopted as a separate amendment to Safe Drinking Water Act reauthorization.

We will debate it, and take action on it at a later date.

I thank my colleague for yielding.

I yield the floor.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

#### AMENDMENT NO. 1731

(Purpose: To establish the Department of Environmental Protection, provide for a Bureau of Environmental Statistics and a Presidential Commission on Improving Environmental Protection, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Ohio [Mr. GLENN] for himself, Mr. SASSER and Mr. LEVIN, proposes an amendment numbered 1731.

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

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

(The text of the amendment appears in today's RECORD under "Amendments Submitted.")

Mr. SIMPSON. Madam President, I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is sufficient second.

The yeas and nays were ordered.

Mr. SIMPSON. Madam President, I thank the managers for their cooperation and assistance.

I hope that the Senate will find it appropriate to support this reasonable and modest attempt to do something, knowing that only 30 percent of the money under the revolving fund is going to be available for loan forgiveness to disadvantaged communities. So the other 70 percent of the funding will not be affected in any way, and will still have Davis-Bacon apply to it.

Mr. BAUCUS. Madam President, several points with respect to the amendment offered by the Senator from Wyoming.

First of all, this is one of I think three so-called Davis-Bacon amendments that have been offered here on the Safe Drinking Water Act. It strikes me that because we are getting different variations of the same issue that a lot of these Davis-Bacon questions would be much more appropriately handled in a more appropriate process, and I would submit that would be the Labor Committee; a very able committee that can deal with the Davis-Bacon questions.

I think it is more fair to all concerned to take up these variations on an orderly basis. I therefore suggest that for that reason alone all of these Davis-Bacon amendments not be approved here at this time. In fact, I do not think they should be approved at all. But at least that is the orderly process in the Labor committee.

The second point that strikes me is this: I do not see why employees, workers in disadvantaged communities should be further disadvantaged by their inability to be paid prevailing wage. It just seems to me that would layer disadvantage on top of disadvantage. The problem we are talking about is not all of the communities, but in many cases it may be a large community. At least it is a disadvantaged community.

It seems to me that if prevailing wage applies to the nondisadvantaged communities, but is not available for disadvantaged communities, that is discrimination against local workers. It does not make sense to me. Therefore, I do not think this amendment makes much sense.

In addition to that, there are a lot of studies that show that a prevailing wage does not increase costs. It does not increase costs over the long run. There are a lot of data, a lot of studies, which very definitely show that the prevailing wage reduces cost overruns. It also tends to increase the quality of construction.

There are a lot of reasons why it enhances stability. It enhances certainty. It enhances reliability so that the contractor, the employees, the union, and the community know what the base is to build upon.

I am not going to get into any great debate about this right now. But I do think those are considerations we should all have in mind when we consider this amendment. And, therefore, I oppose it.

## AMENDMENT NO. 1732

Mr. BAUCUS. Madam President, I have an amendment, the managers amendment, which I submit to the desk, and I ask for its immediate consideration. I ask unanimous consent that the pending amendment be temporarily laid aside.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Montana [Mr. BAUCUS] proposes an amendment numbered 1732.

Mr. BAUCUS. Madam 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 47, line 3, strike "is identified in an intended use plan developed by the State pursuant to section 1474 and the assistance" and inserting in lieu thereof "pursuant to

part G or any other Federal or State program".

On page 48, as amended by amendment No. 1699, strike the following:

"requirements established by the State are based on—

"(I) occurrence data and other relevant characteristics of the contaminant or the systems subject to the requirements; and

"(II) the monitoring frequencies are no less frequent than the requirements of the national primary drinking water regulations for a contaminant that has been detected at a quantifiable level during the 5-year period ending on the date of the monitoring."

and insert in lieu thereof the following:

"requirements established by the State—  
"(I) are based on occurrence data and other relevant characteristics of the contaminant or the systems subject to the requirements; and

"(II) include monitoring frequencies for public water systems in which a contaminant has been detected at a quantifiable level no less frequent than required in the national primary drinking water regulation for the contaminant for a period of 5 years after the detection."

On page 51, before line 2, insert the following:

"(iv) OTHER STATES.—The Governor of any State that does not have primary enforcement responsibility under section 1413 on the date of enactment of this clause may submit to the Administrator a request that the Administrator modify the monitoring requirements established by the Administrator and applicable to public water systems in that State, and the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subparagraph that apply to applications from States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years."

On page 67, line 9, strike "and" and insert "or".

On page 71, line 1, strike "the issuance of the order assessing the penalty" and insert "the proposed issuance of such order."

On page 76, line 23, strike "1432".

On page 78, line 9, strike "to a private entity".

On page 83, lines 11 and 12, strike "and Prohibition on Certain Return Flows."

On page 84, line 21, insert ", except manufacturers," after "supplies".

On page 86, strike lines 21 through 25.

On page 103, line 24, strike "approved pursuant to section 1429" and insert "pursuant to section 1420".

On page 105, line 7, strike "(including travelers)" and insert "endangerment."

On page 116, line 12, strike "subparagraph" and insert "subparagraphs".

On page 116, line 22, strike "and" and insert the following new subparagraph:

"(C) STATE COST ADJUSTMENTS.—The Administrator shall revise cost estimates used in the resource model for any particular State to reflect costs more likely to be experienced in that State, if—

"(i) the State requests the modification;

"(ii) the revised estimates assure full and effective administration of the public water system supervision program in the States and the revised estimates do not overstate the resources needed to administer such program; and

"(iii) the basis for the estimates are used consistently under this title, including for

purposes of section 1474(a)(2) in each fiscal year for which such section is applicable.""

On page 130, between lines 13 and 14, insert the following:

(4) cost-benefit analysis and risk assessment should be presented with a clear statement of the uncertainties in the analysis or assessment;

On page 130, line 14, strike "(4)" and insert "(5)".

On page 130, line 20, strike "(5)" and insert "(6)".

On page 131, line 1, strike "(6)" and insert "(7)".

On page 131, line 11, strike "(7)" and insert "(8)".

Beginning on page 132, line 25, strike all through line 1 on page 133 and insert "estimate the private and public costs associated".

On page 133, strike lines 6 through 9 and insert the following:

(3) EVALUATION OF OTHER FEDERAL ACTIONS.—In addition to carrying out the requirements of paragraphs (1) and (2), the Administrator shall also estimate the private and public costs and benefits associated with selected major Federal actions chosen by the Administrator that have the most significant impact on human health or the environment, including the direct development.

On page 138, line 4, strike "establish" and insert "establish, not later than 24 months after the date of enactment of this Act."

On page 138, strike lines 18 through 21, and insert the following:

(a) DEFINITION OF PUBLIC WATER SYSTEM.—

(1) The first sentence of section 1401(4) (42 U.S.C. 300f(4)) is amended by striking "piped water for human consumption" and inserting "water for human consumption through pipes or other constructed conveyances".

(2) Such section is further amended by adding at the end thereof the following: "A connection for residential use (drinking, bathing, cooking or other similar uses) or to a facility for similar uses to a water system that conveys water by means other than a pipe principally for purposes other than residential use (other purposes, including irrigation, stock watering, industrial use, or municipal source water prior to treatment) shall not be considered a connection for determining whether the system is a public water system under this title, if—

"(A) the Administrator or the State in which the residential use or facility is located has identified any treatment or conditioning necessary to protect human health if the water is used for human consumption and the residential user of owner of the facility is employing such treatment or conditioning at the point of entry; or

"(B) the system certifies to the Administrator or the State that an alternative source of water for drinking and cooking is being provided to the residential users or using the facility.

An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped system with only incidental residential use shall not be considered a public water system, if the residential use complies with subparagraphs (A) and (B)."

(3) The provisions of this subsection shall take effect 1 year after the date of enactment.

On line 9 of Amendment No. 1709, strike "shall" and insert "may".

On page 143, after line 23, insert the following new subsection:

(1) PREVENTION AND CONTROL OF ZEBRA MUSSEL INFESTATION OF LAKE CHAMPLAIN.—

(1) FINDINGS.—Section 1002(a) of the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701(a)) is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

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

"(5) The zebra mussel was discovered on Lake Champlain during 1993 and the opportunity exists to act quickly to establish zebra mussel controls before Lake Champlain is further infested and management costs escalate."

(2) EX OFFICIO MEMBERS OF AQUATIC NUISANCE SPECIES TASK FORCE.—Section 1201(c) of such Act (16 U.S.C. 4721(c)) is amended by inserting "the Lake Champlain Basin Program," after "Great Lakes Commission".

(3) AQUATIC NUISANCE SPECIES PROGRAM.—Subsections (b)(6) and (1)(1) of section 1202 of such Act (16 U.S.C. 4722) is amended by inserting "Lake Champlain," after "Great Lakes" each place it appears.

(4) AUTHORIZATION OF APPROPRIATIONS.—Section 1301(b) of such Act (16 U.S.C. 4741(b)) is amended—

(A) in paragraph (3), by inserting "and the Lake Champlain Research Consortium," after "Laboratory"; and

(B) in paragraph (4)(A)—

(i) by inserting after "(33 U.S.C. 1121 et seq.)" the following: "and grants to colleges for the benefit of agriculture and the mechanic arts referred to in the first section of the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 322)"; and

(ii) by inserting "and the Lake Champlain basin" after "Great Lakes region".

The PRESIDING OFFICER. Is there debate on the amendment?

AMENDMENT NO. 1733

Mr. CHAFEE. Madam President, I send to the desk in behalf of Senator GORTON an amendment, and I ask for its immediate consideration. I ask unanimous consent that the pending amendment be set aside.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. GORTON, proposes an amendment numbered 1733.

Mr. CHAFEE. Madam 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 109, line 7, insert the following after "2000."

"If the Administrator makes a grant to a non-profit organization to provide technical assistance under this section, the Administrator shall assure that the program administered by the non-profit organization, in combination with other grants under this section, provides technical assistance among the States in an equitable manner. A non-profit organization conducting any activities supported by a grant under this subsection, shall consult with the State agency having primary enforcement responsibility under section 1413 on the activities to be conducted in the State."

AMENDMENT NO. 1734

Mr. CHAFEE. Madam President, I ask unanimous consent that the pend-

ing amendment be set aside, and on behalf of Senator HATCH, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the previous amendment is set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Rhode Island [Mr. CHAFEE], for Mr. HATCH, proposes an amendment numbered 1734.

Mr. CHAFEE. Madam 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 124, after line 11, insert the following new paragraph:

"(4) SCHEDULE OF INSPECTIONS.—

"(A) IN GENERAL.—The Administrator or authorized representative of the Administrator shall conduct inspections undertaken pursuant to this subsection during the normal operating hours of the establishment, facility, or other property.

"(B) SMALL SYSTEMS.—(1) For a public water system serving a population of 3,300 or less, the Administrator or authorized representative of the Administrator shall, to the extent practicable—

(i) notify the person referred to in paragraph (1), at least 3 days before the inspection, of the time when the inspection is scheduled to occur, and

(ii) schedule the inspection at a mutually convenient time.

"(C) WAIVER.—The Administrator or an authorized representative of the Administrator may waive the requirements of subparagraphs (A) or (B) if the Administrator or authorized representative of the Administrator determines that an immediate inspection may be necessary to protect public health."

Mr. HATCH. Madam President, this amendment to the pending legislation will address a problem I foresee with this bill for the operators of our smaller public water systems.

The legislation before us today authorizes an official of the Environmental Protection Agency [EPA] to conduct an inspection and audit of any water system that is subject to the provisions of this title. Certainly, no one wants to prevent the EPA from conducting a proper and thorough inspection of our public water systems, no matter the size of the system or the community serviced by that system. We do not want to let an incident go unnoticed and, if the situation is appropriate, unenforced.

However, the operators of the smaller systems in Utah, or almost 90 percent of Utah's systems, do not make their primary income from the position of a system operator. Their primary, secondary, or tertiary responsibilities do not involve the operation of the local water system. This does not mean that they have no interest in the proper operation of the system—they do. It simply means that their effort, and therefore their time, must be appropriated between various conflicting responsibilities. They are farmers, dairy

ranchers, small business owners, and other occupations, and must perform the duties of these positions as well as focus their attention on their position as the local water operators. In Utah, one of our operators is an employee of the Utah State Board of Education, and one owns and operates a nursing home.

My amendment takes this diversity into consideration. My amendment encourages the EPA to conduct inspections authorized under this act, for public water systems serving populations of 3,300, at a time that is as convenient as possible to the local operators. This is merely a consideration to those individuals who have to juggle their schedules and perhaps even commute some distance. Spot inspections conducted by the EPA would not be fair, appropriate, or even effective without the presence of the operator. EPA officials should address monitoring or water quality problems in a particular system, and I encourage them to take what action they need. But, my amendment encourages them to contact the operator of that system to schedule a time certain when an inspection and audit can be accomplished.

We do not need to encourage further acrimony between local government officials and the Federal Government by allowing one party to make one-sided demands on the other. They need to work together. This cooperation can begin in this legislation by working to agree to a time and place for the inspection.

Originally, the amendment would have required a written notice by the EPA to the local operator within a certain number of days. While that solution would be my first preference, I am willing to accommodate the procedural concerns of the EPA and the managers of this bill. Therefore, I have modified the amendment so that the EPA inspector shall, to the extent practicable, contact the local operator three days in advance prior to scheduling an inspection, and determine, if possible, a mutually agreeable time to conduct the inspection and audit of the system's records. The amendment authorizes the Administrator to conduct an inspection if there is a compelling reason to do so in the interest of protecting public health. The important part of my amendment is that EPA officials be encouraged to give prior notification to the local operator as they carry out this inspection and audit activity.

I believe this is a reasonable requirement for EPA officials. It may not seem important to many people, but it is critical to the operators of small public water systems. I appreciate the willingness of the managers of the bill to review this issue, and I urge the amendment's adoption.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

## AMENDMENT NO. 1730

Mr. SIMPSON. Madam President, I would just respond to my good friend from Montana in the final arguments with regard to my amendment which I think is different from other Davis-Bacon amendments.

This amendment that I present has to do with poor communities. These are disadvantaged communities I speak of which cannot even afford drinking water. It is nice to think of the Safe Drinking Water Act, except if you are in a situation where you could impose a maximum levy on your whole community, and it will not even build you a water tower. That is the reality in many places in America.

That is why the revolving fund is very appropriate. But this is an effort to give them more for their money. It is not an effort to make them more disadvantaged. Often workers for these treatment plants come from out of town. You can talk about the fellow making \$20,000 or \$23,000 a year. We are talking about the person who is very skilled, willing to work for \$15,000 a year, and cannot get a job because of Davis-Bacon, because of a union prevailing wage. And there is no way that person can get a job in a disadvantaged community.

If you want to do something for the local community, for local contractors, that issue of quality always comes up. The water system here in Washington, D.C. was built under Davis-Bacon requirements. And we had the biggest scare in history last year with regard to potable water in the District of Columbia. Then there was a building a few blocks from here that fell in a couple of years ago. During construction, it just collapsed. All of that was not exactly quality work under Davis-Bacon. I think that is an argument that certainly can be challenged.

But that is the purpose of the amendment.

I thank the managers, and I appreciate their courtesy.

Mr. BAUCUS. Madam President, I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

## AMENDMENT NO. 1735 TO AMENDMENT NO. 1729

(Purpose: To provide a perfecting amendment)

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

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The bill clerk read as follows:

The Senator from Arkansas [Mr. BUMPERS] for Mr. MITCHELL, for himself, Mr. BUMPERS, and Mr. BAUCUS proposes an amendment numbered 1735.

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

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

The amendment is as follows:

Strike all after the first section heading and insert the following:

(a) SHORT TITLE.—This section may be cited as the "Private Property Rights Act of 1994".

(b) FINDINGS.—The Congress finds that—

(1) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the Constitution by the Fifth Amendment and made applicable to the States by the Fourteenth Amendment; and

(2) Federal agencies should take into consideration the impact of Governmental actions on the use and ownership of private property.

(c) PURPOSE.—The Congress, recognizing the important role that the use and ownership of private property plays in ensuring the economic and social well-being of the Nation, declares that the Federal Government should protect the health, safety, and welfare of the public and, in doing so, to the extent practicable, avoid takings of private property.

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

(1) the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and—

(A) includes the United States Postal Service; and

(B) does not include the General Accounting Office; and

(2) the term "taking of private property" means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

(e) PRIVATE PROPERTY TAKING IMPACT ANALYSIS.—

(1) IN GENERAL.—The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this section; and

(B) all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property, except that—

(i) this subparagraph shall not apply to—

(I) an action in which the power of eminent domain is formally exercised;

(II) an action taken—

(aa) with respect to property held in trust by the United States; or

(bb) in preparation for, or in connection with, treaty negotiations with foreign nations;

(III) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(IV) a study or similar effort or planning activity;

(V) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(VI) the placement of a military facility or a military activity involving the use of sole Federal property; and

(VII) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(i) in a case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation pursuant to section 553(b)(B) of title 5, United States Code, the taking impact analysis may be completed after the emergency action is carried out or the regulation is published.

(2) CONTENT OF ANALYSIS.—A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(3) SUBMISSION TO OMB.—Each agency shall provide an analysis required by this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with the proposed regulation.

(f) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) GUIDANCE.—The Attorney General shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) REPORTING.—Not later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall provide a report to the Director of the Office of Management and Budget and the Attorney General identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation pursuant to the Just Compensation Clause of the Fifth Amendment to the Constitution. The Director of the Office of Management and Budget and the Attorney General shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies made pursuant to this paragraph.

(g) JUDICIAL REVIEW.—

(1) IN GENERAL.—Subject to paragraph (2), nothing in this section shall create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party at law or equity against the United States, an agency or instrumentality of the United States, an officer or employee of the United States, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, any alleged failure to comply with this section may not be used as a ground for affecting or invalidating the agency action.

(2) CLAIMS FOR JUST COMPENSATION.—Nothing in this section shall limit the right of

any person to seek just compensation pursuant to the Fifth Amendment to the Constitution.

(h) EFFECTIVE DATE.—The provisions of this section shall take effect 120 days after the date of the enactment of this Act.

Mr. BUMPERS. Madam President, could I inquire of the distinguished floor manager what the parliamentary situation is here, and how we are handling these amendments?

Mr. BAUCUS. Madam President, 3 o'clock having arrived, we are in a somewhat complex and unique situation.

As I understand it, after consulting with the parliamentarian, we now have 11 amendments to dispose of here. We are taking them in reverse order until 3:45, and at 3:45 we will have a vote on the Johnston risk-taking amendment. At that point, I think we can proceed in the order in which they were offered.

Mr. BUMPERS. I understood from my staff—and I want to verify it—the amendment I offered just now to the Dole amendment will be debated and voted on, at which time, if I prevail, at that point, he would be entitled to offer a second-degree amendment to mine; is that correct?

Mr. BAUCUS. That is my understanding. That is correct.

Mr. BUMPERS. I thank the floor manager.

I yield the floor.

The PRESIDING OFFICER. If the Senator will withhold, if there is no objection, the Bumpers amendment No. 1735 will be considered a second-degree amendment to the Dole amendment No. 1729.

Mr. BAUCUS. Madam President, what is the regular order?

The PRESIDING OFFICER. The regular order is the Johnston amendment No. 1722.

Mr. BAUCUS. Madam President—  
The PRESIDING OFFICER. The pending amendment is the Hatch amendment.

Who seeks recognition?

AMENDMENT NO. 1732

Mr. BAUCUS. Madam President, I ask unanimous consent that we now take up the managers' amendment, amendment No. 1732, offered on behalf of myself, and I ask that that now be the pending business.

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

Mr. BAUCUS. Madam President, this is essentially a technical amendment. This is the managers' amendment including technical provisions.

It has been cleared, and I urge the Senate to approve it.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1732) was agreed to.

Mr. BAUCUS. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. LIEBERMAN). The pending amendment is the Hatch amendment.

Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

UNANIMOUS CONSENT AGREEMENT

Mr. BAUCUS. Mr. President, we have 10 amendments before us, on three of which the yeas and nays have been ordered. Two of those three are Davis-Bacon amendments. One was offered by Senator SMITH and the other by Senator SIMPSON.

Under a previous unanimous consent agreement, the first vote is to occur at 3:45 on the Johnston amendment No. 1720.

I ask unanimous consent that pending the disposition of the Johnston amendment No. 1720, the Senate proceed to vote on two Davis-Bacon amendments, namely, amendment No. 1728 and amendment No. 1730, that the vote occur on or in relation to those amendments; further, that no second-degree amendments pursuant to those two amendments be in order.

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

Mr. CHAFEE. Mr. President, as I understand the procedure now, at 3:45, we will vote on the Johnston amendment dealing with risk assessment?

The PRESIDING OFFICER. The Senator from Rhode Island is correct.

Mr. CHAFEE. I also understand that following disposition of that we will vote on the Smith amendment dealing with Davis-Bacon?

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. CHAFEE. Following the disposition of that, it is my understanding we will then vote on the Simpson amendment dealing with Davis-Bacon?

The PRESIDING OFFICER. Again that is the understanding of the Chair. The Senator is correct.

The Chair advises the Senator from Rhode Island that the votes on those three matters will be on or in relation to the matters stated.

Mr. CHAFEE. Meaning not necessarily up or down?

The PRESIDING OFFICER. The Senator is correct.

Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BURNS. 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. 1729

Mr. BURNS. Mr. President, I rise in support of the Dole amendment, as we have some time here before these three votes occur. It has a tremendous impact and importance to the property owners in Montana and this country. Farmers, ranchers and business people, who would like to have some kind of control over their lands to make a living, are rallying behind this legislation that would help protect them from legislative or regulatory assault on private property rights. This problem is a concern to Montanans on all kinds of legislation.

Private property rights are protected under the fifth amendment to the Constitution which states "nor shall private property be taken for public use without just compensation." Yet, we see many laws and many regulations being promulgated now that are encroaching further and further on this right, because people here inside this beltway do not respect or understand the importance of maintaining this right. In fact, it is the cornerstone of this free society.

Wetlands and endangered species regulations in particular have had a devastating impact on Montana property owners. The opportunity to make a living is dramatically reduced. Their opportunity to conduct normal agricultural operations, build a house, or even utilize water from Federal storage projects is often threatened on the very land that they rightfully own and have a right to the activities on that land.

I have taken several actions aimed at reducing the takings impact of Federal laws and regulations. In 1991, I submitted to the U.S. Supreme Court a friend-of-the-court brief which dealt with the taking of private property in South Carolina. In this case, the Court sided with the property owner, reaffirming every American's right. I have added my name as a cosponsor of S. 2006 by Senator DOLE and several other pieces of legislation to reduce the impact of takings.

I think that is what we are talking about here. It is not that some activities are done for the public good. But if they are, then the property owner has to be compensated for that taking.

The amendment before you today is very simple. It is very straightforward. It merely requires Federal agencies to look before they leap when they promulgate regulations. It requires them to conduct takings impact assessments to determine what effect their actions will have on the use and the value of private property.

If the action will result in a taking, the amendment requires agencies to consider the alternatives that would

reduce the impact on private property. Not only does this amendment protect private property, but it also protects the Government agencies from expensive legal actions if they are initiated by a property owner as a result of a taking.

So, Mr. President, with this amendment, Congress is merely reinforcing the Government's responsibility to reduce the impact of their actions on property owners, something Government should already be doing.

In other words, it should not even have to be put in this legislation. In other words, all we have to do is look to the fifth amendment anytime the Government does something. But basically that is what we are doing. We are shoring up this fifth amendment. It is good for property owners. It is also good for this Government.

I strongly urge your support of this amendment. It just says, "Government, look before you leap in the area of private property on any kind of a rule or regulation that is promulgated out of Washington."

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

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAIG. 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. CRAIG. Mr. President, this afternoon, I join with my colleague from Montana in support of Senator DOLE's amendment on private property taking.

The Senator has produced an amendment that is very similar to legislation that has several times passed the U.S. Senate. The Senator is calling this the Private Property Rights Act of 1994.

I find it an interesting time in our Nation when we must once again affirm the right of our citizens under the fifth amendment to the Constitution; that, at the risk of an all-intrusive Federal Government, we must argue on the floor of this Senate that citizens are entitled once again to the property rights that were propounded for them in the Constitution by our Founding Fathers.

But that is what we are about this afternoon. We are about it because for over three decades we have seen a progression of public policy that has continually eroded the private property value in the sense of the right of the landowner or the property owner in this country.

How has that come about? Well, it has come about largely because we have failed as a Congress to be observant and to be critical of agencies in their administration of the public policy that we create.

Let me this afternoon give you an example of the kind of issue that the DOLE amendment would clarify. Because, as has been outlined by my colleague from Montana, the DOLE amendment largely, in its protection of the private citizen through the fifth amendment, as it was made applicable by the 14th amendment in our Constitution, basically puts up a private property taking impact analysis that would require a Federal agency to submit a certification to the Attorney General of the United States that a property taking impact analysis had been completed before the issuing or promulgating of policy, regulation, proposal, or recommendation as it relates to their activities as it might impact private property.

The example that I am referring to that is so typical resulted in a small community in Blaine County, ID. Well, to many of you, that does not make much sense, until I tell you it is right next to Sun Valley, ID. It is just a few miles from the home of Picabo Street, who now we honor as a medalist in the Olympics and bringing this Nation to the kind of respect we love to see coming from our athletes.

Triumph, ID, is a small, rural, now retirement and recreational community that once upon a time was a mining community. About 1½ or 2 years ago, the EPA, in its frustration because it could not administer Superfund in that we had so badly skewed it to become a lawyer's haven, began to search for areas around the United States that they could quickly bring the Superfund law over and show its worth and therefore prove to the American public that all is well with Superfund and we were going to clean up hazardous waste sites.

And, lo and behold, they targeted Triumph, ID. It was an old mining community. It had old tailing ponds and a tailing pile and private homes were built all around it and wildlife abounded. And yet, they said, for some reason, this was going to become a Superfund site. Every citizen of that community could imagine large trucks rolling in, Caterpillars working, ground being removed, property values plummeting dramatically. Nobody wanted to live in the view of a Superfund site.

So some very courageous citizens took the EPA on. They went out and they got their scientists. They discovered that every fact that the EPA had put out on Superfund as it related to arsenic in the soil and in the water and lead in the soil and the water simply was not true; that, in fact, EPA had rushed to judgment, and in rushing to judgment, they had badly damaged or put at risk the property and therefore sometimes the whole lifetime earnings of the citizens of this small community.

Well, I helped those citizens some. But, let me tell you, they helped them-

selves. They spent literally thousands and thousands of dollars to protect their property against a big Federal Government that simply said, "We don't care. We are going to do this because we have the right to do it. Property values be damned. We do not care about you citizens. We have a mandate and our mandate is going to drive us to assure that this is going to be a safer place to live."

Well, they got outsmarted by the citizens. But that fight still goes on and the citizens, in a very gallant and vital way, are holding the giant Federal Government at bay, because they have been able to argue and hire quality and bona fide and highly recognized scientists to prove that the EPA was wrong.

The Dole amendment to protect private property, to force Federal agencies to do an analysis of impact, would have avoided the Triumph mine situation. That is one of literally hundreds of examples around this country today where a Federal agency, under the mandate of Federal law and rule and regulation, moves in and, by their action, begins to rapidly destroy private property values and they do not offer compensation under the fifth amendment as they are supposed to. They just simply walk away in their arrogance—the arrogance of power.

We have actually seen people put in prison because they decided to change the nature of their private property, and Federal agents under the guise of wetlands protection came in and took these individuals to court and show when in fact it could be argued that, while the private property owner was working to improve the value of his or her property, the Federal Government was simply saying you could not do that.

The Dole amendment would begin the process of correcting that tremendous threat that now hangs over the private property owner, the citizen of this country who once felt himself and herself whole under the fifth amendment as it was made applicable by the 14th. That is really the essence of this debate. And I am absolutely amazed that there are going to be Senators who will come to this floor and argue this is something we ought not to be engaged in, that this amendment does not apply, that somehow it ought to go away, that it is not important for the right of our citizens to be held whole in the value of their property.

Why it is important is for all the reasons I have just given and many more. We now have a Secretary of a very important agency of our Government who recently said, in an interview in a national publication, that property lines and property rights are obsolete Anglo-Saxon concepts and that in the pursuit of a greater cause we ought to do away

with these barriers or lines that ultimately define property rights and protect the citizen in his or her ownership and the values of their property.

I am amazed by that statement. I think all of us were surprised by it, that one of the leading Federal officials of our Government would stand forth and make that kind of statement, that private property is an obsolete concept. Our whole Nation was founded on it. Our Constitution defines it and protects it for us. And why is it not proper for us today to be engaged in a debate to ensure that we work toward increasing the protection of private property values for the right of our citizens?

I applaud Senator DOLE today for bringing forth this amendment. I am a cosponsor of it. But to assure that we as a Senate continue to broaden our base of understanding of private property, just several months ago Senator HOWELL HEFLIN and I organized a private property caucus, that many Senators have now become members of, for the purpose of educating for better understanding and bringing about a base of knowledge for the Senate relative to the protection of private property in our country and the assurance we will not continue down that long road, that march toward increased law and public policy that somehow constantly puts this basic American right at jeopardy or destroys the value of this right when an individual may have invested his or her lifetime's savings or earnings into that right or into that property. That is really the debate here this afternoon. That is the issue that is at hand.

While others may try to interpret it differently, the amendment is very straightforward. It simply puts up a test and a reasonable test that says that Federal agencies of our Government must examine through an analysis process whether the rules and regulations promulgated and the policies of the laws we pass have in some way a way of diminishing the value of private property that could be described as a taking and, therefore, under the fifth amendment, the citizen would find himself or herself to be justly compensated by their Government for that taking.

I strongly support the amendment. I encourage my colleagues to join with us in the support of this amendment. It is fundamental to our country and to the strength of our economy.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate for 6 minutes as in morning business.

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

The Senator from the State of Arizona is recognized.

Mr. MCCAIN. I thank the Chair.

(The remarks of Mr. MCCAIN pertaining to the introduction of S. 2128 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

VOTE ON AMENDMENT NO. 1720

The PRESIDING OFFICER. The hour of 3:45 p.m. having arrived, the question occurs now on agreeing to amendment No. 1720, offered by the Senator from Louisiana [Mr. JOHNSTON].

The yeas and nays have been ordered. Mr. MURKOWSKI. Mr. President, I rise to support the Johnston amendment, which requires the EPA Administrator to publish in the Federal Register a cost-benefit and comparative risk analysis of EPA's proposed and final major regulation. Major regulations means a regulation that the Administrator determines may have an effect on the economy of \$100 million or more in any one year.

I have offered some cost-benefit amendments myself and am very supportive of the idea of weighing the benefits of proposed rules against projected costs and making commonsense decisions about what risks to regulate and how closely to regulate them. I have, in the past, offered amendments that would have required the EPA Administrator or head of an Agency to publish in the Federal Register the cost-benefit analysis to both proposed and final regulations.

So, I support the Johnston amendment. This is a good amendment although it could go even further. For instance, this amendment could be applied to all Agencies, and to all regulations with the exception of those regulations dealing with agency organization, management, or personnel matters, or regulations related to military or foreign affairs matters as outlined in the recent Executive order on regulatory review.

However, I am pleased to see that the amendment now applies to proposed rules, not just to final rules. This is absolutely essential and reflects language in the cost-benefit amendments that I have offered. Analyzing rules at the proposed stage provides the public with the knowledge it needs to fully comment on rules before the final rules are promulgated. It allows the public to comment with information regarding risk analysis and cost-benefit analysis.

I congratulate my colleague, Senator JOHNSTON, for his commitment to this needed reform in our regulatory process. I am also committed to remaining active in this area.

I would now like to make some important points that I think Dr. Graham, the director of the Harvard Center for Risk Analysis, has illustrated very well in an editorial that he wrote that was published in Risk Analysis, a peer-reviewed publication of the Society for Risk Analysis.

His editorial is based on testimony delivered before the Senate Committee

on Energy and Natural Resources here in Washington, DC, on November 9, 1993. I testified at this hearing on the benefits of cost-benefit analysis.

The editorial asks the question whether it is "Time for Congress to Embrace Risk Analysis?" I think the Senate side has agreed that it is time.

Dr. Graham makes some excellent points. Each of us is confronted with numerous risks when we get out of bed every morning. And, we do what we can to minimize these risks.

Our resources are scarce. Any resources used to reduce low-level risks, which are often in the environmental area, are resources that can not meet other needs of our society that in many cases are more pressing and will save more lives.

Dr. Graham wisely points out that:

The scarce human and material resources devoted to environmental protection are resources that we cannot use to combat crime, educate our children, reduce poverty, improve health reform, strengthen out national defense, and meet the other basic needs of citizens and their families.

Dr. Graham correctly states that the reality check of the high cost of reducing risks is hitting Congress and the President as we look at the health care system has not yet registered in environmental policy.

Dr. Graham also points out that we have considered environmental legislation for pesticides to protect for a one-in-one-million lifetime cancer risk or beyond. He asks "How small is this risk?"

According to Dr. Graham's editorial,

By way of comparison, there is a tiny yet nonzero chance that an airplane will inadvertently miss its destination and strike one of us. It turns out that a baby born today in the United States has not one chance but roughly four chances in a million of suffering this unfortunate outcome in his or her lifetime.

Dr. Graham points out that:

While we do regulate airplanes to minimize the frequency of mishaps, no one has seriously argued that we should ban airplanes that violate a one-in-a-million rule, without even considering the benefits of airplanes.

Without oversight such as that provided by the Johnston amendment, EPA has charted a course spending millions to reduce risks to unnecessarily low levels.

Dr. Graham concludes that:

Whether the technology is airplanes, pesticides, or coal-based electric power production, sound regulatory legislation must authorize consideration of the risks, costs, and benefits of technologies and their potential substitutes.

I agree with Dr. Graham. I think that common sense in a time of limited resources dictates this approach to policymaking.

I do not necessarily agree with each and every statement made by Dr. Graham, but I agree with the main message of his editorial.

I agree with Dr. Graham that Congress must promote a risk-based, cost-

benefit approach to environmental policy. We must consider both what is actually known about the magnitude of risks and what citizens are willing to pay for various risk reductions in light of this knowledge.

I would now like to submit for the RECORD the editorial written by Dr. Graham.

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

[From the Risk Analysis]

TIME FOR CONGRESS TO EMBRACE RISK ANALYSIS?<sup>20</sup>

(By John D. Grahsm<sup>21</sup>)

Each day citizens are confronted with new information about potential dangers to their health and safety, the well-being of their families, and the quality of their natural environment. What are citizens to make of this potpourri of risks: the potential dangers of childhood cancer from living in homes near electric powerlines, the chances of premature death among the elderly from the inhalation of fine particles from cars and factories, lung cancer from the naturally occurring levels of radon in our basements, birth defects from eating fish with trace amounts of PCBs and dioxin, neurological effects in children from ingestion of lead paint, aggravation of asthma from breathing excessive levels of ozone in urban areas, breast cancer from consuming minute amounts of pesticide residues on foods, and potentially catastrophic changes in global climate from the release of greenhouse gases?

Journalists, opinion leaders, policymakers, and the public are looking for guidance about which dangers are real and which are exaggerated, which are big enough to worry about, and which can be reduced or prevented altogether through feasible, cost-effective action. If our nation had unlimited resources to devote to environmental protection, then there would be less need for risk analysis. But the reality of scarcity is more apparent today than ever before. The scarce human and material resources devoted to environmental protection are resources that we cannot use to combat crime, educate our children, reduce poverty, improve health care, strengthen our national defense, and meet the other basic needs of citizens and their families.

#### MISALLOCATED RESOURCES

The current debate on the economics of health care reform foreshadows a vigorous national debate about the economics of environmental protection. Take, for example, the Clean Air Act Amendments of 1990. This single law, while promising numerous benefits, is estimated to add \$25 billion per year to the nation's \$150 billion annual investment in environmental risk reduction.<sup>1</sup> As Senator Daniel Patrick Moynihan has observed, \$150 billion per year is not necessarily an excessive level of spending for clean air and water but it is certainly too much to invest unwisely.<sup>2</sup>

The "reality check" that is hitting the health care system has not yet registered in environmental policy. Compare, for example, the Clinton Administration's recent proposals for investment in cancer prevention through medical care and the control of pollution at industrial plants.

In the case of early detection and treatment of cervical cancer, the Clinton basic se-

curity plan covers women for one screening every three years at an estimated marginal cost of \$14,000 per year of life saved. But why didn't the Clinton plan authorize screens every two years, every year, or every six months? It turns out that the cost-effectiveness of authorizing more frequent screening deteriorates rapidly. The best estimates are that the marginal cost of screening every two years (instead of three) is about \$200,000 per year of life saved, and that the marginal cost of annual screens (instead of every two years) would approach \$675,000 per year of life saved.<sup>3</sup> Mrs. Clinton and her colleagues made a difficult yet reasonable resource allocation decision by limiting coverage to a screening frequency of once every three years.

In contrast, consider the cost-effectiveness of EPA's proposed regulation of the pulp and paper industry, which was announced recently. EPA estimates that the annualized cost of this single rule will be \$888 million per year. The agency's mid-range estimates of benefits include \$486 million in environmental benefits plus 14 fewer cases of cancer per year from less exposure to toxic chemicals such as dioxin and chloroform.<sup>4</sup> If each case of cancer would have been fatal and would have shortened life by 15 years, then EPA's mid-range estimates imply that this regulation will cost about \$1.9 million per year of life saved. Thus, while Mrs. Clinton has rejected cancer prevention investments that cost more than \$250,000 per year of life saved, the EPA is proposing to enact rules that will cost millions of dollars per year of life saved.

Admittedly, the specific example of dioxin control does not permit a perfect investment comparison. Dioxin is not only a carcinogenic agent but is also known to cause adverse ecological effects and various non-cancer health effects of unknown frequency and severity. Perhaps more importantly, preventing the formation of cancer through pollution prevention is certainly more desirable than detecting a cancer early and successfully treating it. The mere knowledge of tumor formation can cause enormous suffering among patients, family members, and friends.

We need to consider carefully the differences in the two risk-reduction strategies, and ask ourselves how much society should be willing to pay for primary prevention of cancer through pollution prevention? Should it be \$25,000 per life year saved, \$100,000 per life year saved, or over \$1 million per life year saved? If we do not address this issue, we may create an economic crisis in environmental protection similar to what we now face in the health care system. In fact, if EPA-style risk management is applied unthinkingly to cleanup decisions at sites managed by the Department of Energy and the Department of Defense, it will not be difficult to bankrupt the country's economic future!

Another good example of our inability to apply sound risk analysis to environmental protection occurs in legislation to reform pesticide regulation. Some interest groups are promoting a plan that would ban any pesticide shown to cause cancer in rodents if the hypothetical lifetime cancer risk to food consumers is estimated to be as small as one chance in a million.<sup>5</sup> How small is this risk? By way of comparison, there is a tiny yet nonzero chance that an airplane will inadvertently miss its destination and strike one of us. It turns out that a baby born today in the United States has not one chance but roughly four chances in a million of suffering

this unfortunate outcome in his or her lifetime.<sup>6</sup>

While we do regulate airplanes to minimize the frequency of mishaps, no-one has seriously argued that we should ban airplanes that violate a one-in-a-million rule, without even considering the benefits of airplanes. Unfortunately, in recent testimony to a joint House-Senate hearing, EPA proposed a plan that would ultimately prohibit any consideration of the benefits of risky pesticides, even when the cancer risks are slight. This prohibition of benefits analysis was proposed without acknowledging the considerable scientific progress that has been made in estimating the benefits to consumers of pesticide use.<sup>7</sup> The pesticide example illustrates a broader point. Whether the technology is airplanes, pesticides, or coal-based electric power production, sound regulatory legislation must authorize consideration of the risks, costs, and benefits of technologies and their potential substitutes.

The solution to the problem of resource misallocation must be crafted carefully. A large-scale program of deregulation at EPA would be counterproductive. Many EPA programs such as the phase-out of lead in gasoline have generated human health and economic benefits that were far in excess of costs.<sup>8</sup> Nor would it be appropriate to so overload EPA with analytical requirements that a "paralysis by analysis" ensues. What is needed are specific administrative and legislative steps that induce EPA and other agencies to be more selective in policy choice based on the findings of insightful yet timely risk analysis, benefit-cost analysis, and equity analysis.

#### AN AGENDA FOR CONGRESS AND THE PRESIDENT

Given the widespread confusion in Washington about the proper role of analysis in environmental policy, it is urgent that the White House and Congress revamp the current decision-making processes.

The Clinton Administration has taken an important first step with the 1993 executive order on regulatory planning that reinforces the requirement that agencies conduct benefit-cost studies of major rules. President Clinton's new requirement that agencies conduct comparative assessments of risks within their jurisdiction is a modest yet encouraging innovation. The renewed openness of the regulatory review process under the Clinton Administration is also encouraging because it will foster better public understanding of risks, costs, and benefits.

The Administration needs to go further by building the capacity of the Executive Office of the President to participate in risk analysis and management. Other commentators have noted the limited expertise within the Office of Management and Budget on questions of risk.<sup>9</sup> Either more and new kinds of expertise need to be added to OMB or the Office of Science and Technology Policy needs to be better equipped to provide leadership in risk analysis.<sup>10</sup> The Council of Economic Advisers also needs to become a more consistent and determined contributor in the Administration's discussions of risk management reform.

Regardless of how far the Clinton Administration goes in this direction, it is absolutely critical that Congress enact legislation to promote a risk-based approach to environmental policy. Years of experience have taught us that EPA (as well as Congress) have often been guilty of "asking the wrong questions" (such as asking what is "safe" rather than considering the magnitude of the risk and how much citizens are willing to pay for various amounts of risk reduction).<sup>11</sup>

Footnotes at end of article

If Congress does not endorse a risk-based approach, the message to EPA will be that "business as usual" is acceptable since EPA can simply say that they are doing what Congress has told us to do.

The most immediate step that Congress should take is to elevate EPA to Cabinet status with legislation that highlights the importance of risk analysis, cost-benefit analysis, and equity analysis in the pursuit of pollution prevention. In this regard, Senator Bennett Johnston's recent amendment is a crucial first step in the correct direction, particularly the provisions about use of best available science, comparative risk assessment, and reporting of the benefits and costs of each rule (where feasible). I also support the efforts to promote environmental equity considerations through statutory provisions that will encourage the risk analysis community to document which groups of citizens in the United States are incurring the risks, costs, and benefits of environmental policies.

To enhance the proper reporting of environmental risks to the public, legislation aimed at improving risk communications is urgently needed. Scientists in agencies need more resources and congressional encouragement to play a role in risk communication.<sup>12</sup> The hands of government scientists would be strengthened if Congress would insist that the degree of scientific uncertainty in risk estimates be reported to the public, particularly in ways that facilitate valid comparisons of risks across EPA program offices and even across agency jurisdiction. Only through a consistent and accurate risk assessment process can Congress gain access to the information necessary to allocate scarce resources properly among competing programs and agencies.<sup>13</sup> A new bill (H.R. 2910) introduced in the House by Representatives Moorhead and Brown deserves serious consideration because it would set into motion the development of promising new techniques of risk characterization.<sup>14</sup>

Finally, Congress needs to get serious about passing Senator Daniel Patrick Moynihan's bill (S. 110) that would promote rational priority setting at EPA through comparative risk analysis.<sup>15</sup> This technique is proving very useful at the state and local levels of government and in other countries by stimulating scientific and public debate about what our environmental priorities should be.<sup>16</sup> In contrast to those who believe that comparative risk assessment represents a tyranny of experts, I believe this tool can provide policymakers and the public just the type of information that Thomas Jefferson would have desired us to have.

The Moynihan bill could be strengthened by adding provisions that call for a ranking of risk-reduction opportunities (including their costs) as well as a ranking of risks. I was encouraged to learn that Representative Richard Zimmer (R-NJ) has played a leadership role in the House by bringing risk-reduction concepts to the EPA Cabinet bill. In the long-run, the efforts by Senator Moynihan and Representative Zimmer will direct EPA's energies to the more serious problems such as childhood lead poisoning,<sup>17</sup> and indoor air pollution.<sup>18</sup> If recently published evidence on the mortality effects of inhaling fine particles is validated, this may also prove to be one of the largest environmental problems from a public health perspective.<sup>19</sup>

Momentum in Congress is building for legislation aimed at strengthening the role of risk analysis in environmental policy. This movement does not represent a retreat from environmental protection or a backlash against the environment, radical steps that

the public will not and should not take. Recent environmental ballot initiatives in California, Ohio, and Massachusetts were defeated at the polls precisely because these ambitious proposals were not sensitive to public concerns about what would be accomplished in a period of intensified scarcity. The risk-analysis movement should represent a constructive effort to better allocate our precious risk-reduction resources in ways that are sensitive to the concerns of both efficiency and equity. In the long run, the best defense of environmental policy is clear justification in the basic principles of risk analysis and management.

## FOOTNOTES

<sup>1</sup> *Environmental Investments: The Cost of a Clean Environment* (U.S. Environmental Protection Agency, Washington, D.C., December 1990); Paul R. Portney, "Policy Watch: Economics and the Clean Air Act," *Journal of Economic Perspectives* 173-181 (1990); Richard Schmalensee, "The Costs of Environmental Protection" (Center for Energy and Environmental Policy, MIT, Cambridge, Massachusetts, October 1993, Research Working Paper 93-015).

<sup>2</sup> Senator Daniel Patrick Moynihan (D-NY), "Environmental Risk Reduction Act," *Congressional Record* (January 21, 1993), p. S550.

<sup>3</sup> David M. Eddy, "Screening for Cervical Cancer," *Annals of Internal Medicine* 113, 214-226 (1990).

<sup>4</sup> U.S. Environmental Protection Agency, "Effluent Limitation Guidelines, Pretreatment Standards, and New Source Performance Standards: Pulp, Paper and Paperboard Category; National Emission Standards for Hazardous Air Pollutants" (Proposed rules, 40 CFR Part 430, 40 CFR Part 63, 1993).

<sup>5</sup> Alon Rosenthal, George M. Gray, and John D. Graham, "Legislating Acceptable Cancer Risk from Exposure to Toxic Chemicals," *Ecology Law Quarterly* 19, 269-362 (1992).

<sup>6</sup> Bernard D. Goldstein, Michele Demak, Mary Northridge, and Daniel Wartenberg, "Risk to Groundlings of Death Due to Airplane Accidents: A Risk Communication Tool," *Risk Analysis* 17, 339-341 (1992).

<sup>7</sup> David Zilberman, Andrew Schmitz, Gary Casterline, Erik Lichtenberg, and Jerome B. Siebert, "The Economics of Pesticide Use and Regulation," *Science* 253, 518-522 (1991).

<sup>8</sup> U.S. Environmental Protection Agency, *The Costs and Benefits of Reducing Lead in Gasoline* (Final Regulatory Impact Analysis, Washington, D.C., 1985).

<sup>9</sup> K.S. Crump and R. Gentry, "A Response to OMB's Comments Regarding OSHA's Approach to Risk Assessment in Support of OSHA's Final Rule on Cadmium," *Risk Analysis* 13, 487-489 (1993); P.F. Infante, "OMB Interference in Federal Agency Risk Assessments and Health Study Design Protocols," *Risk Analysis* 13, 491-492 (1993).

<sup>10</sup> *Risk and the Environment: Improving Regulatory Decision Making* (The Carnegie Corporation, New York, 1993).

<sup>11</sup> Marc K. Landy, Marc J. Roberts, and Stephen R. Thomas, *The Environmental Protection Agency: Asking the Wrong Questions* (Oxford University Press, New York, 1990).

<sup>12</sup> John D. Graham (ed.), *Harnessing Science for Environmental Regulation* (Praeger, Westport, Connecticut, 1991).

<sup>13</sup> John D. Graham, Laura C. Green, and Marc J. Roberts, *In Search of Safety: Chemicals and Cancer Risk* (Harvard University Press, Cambridge, Massachusetts, 1988); M. Granger Morgan and Max Henrion, *Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis* (Cambridge University Press, New York, 1990).

<sup>14</sup> H.R. 2910, 103rd Congress, 1st Session (August 6, 1993).

<sup>15</sup> S. 110, 103rd Congress, First Session (January 21, 1993).

<sup>16</sup> Richard A. Minard, Jr., Kenneth Jones, and Christopher Paterson, *State Comparative Risk Projects: A Force for Change* (Northeast Center for Comparative Risk, South Royalton, Vermont, March 1993).

<sup>17</sup> Karen L. Florini and Ellen K. Silbergeld, "Getting the Lead Out," *Issues in Science and Technology*, 9, 40-46 (1993).

<sup>18</sup> Jonathan M. Samet and John D. Spengler (eds.), *Indoor Air Pollution* (Johns Hopkins University Press, Baltimore, 1991).

<sup>19</sup> Douglas Dockery and C. Arden Pope III, "Acute Respiratory Effects of Particulate Air Pollution," *Annual Review of Public Health* (in press).

<sup>20</sup> This editorial is based on testimony delivered before the Committee on Energy and Natural Resources, United States Senate, Washington, D.C., November 9, 1993. Helpful comments were provided by Joshua Cohen, Adam Finkel, George Gray, Richard Minard, Susan Putnam, and March Sadowitz. The opinions are exclusively those of the author.

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The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Michigan [Mr. RIEGLE] is necessarily absent.

I also announce that the Senator from Alabama [Mr. SHELBY] is absent because of illness.

The PRESIDING OFFICER (Mr. GRAHAM). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 8, as follows:

[Rollcall Vote No. 117 Leg.]

YEAS—90

Akaka	Faircloth	Mack
Baucus	Feinstein	Mathews
Bennett	Ford	McCain
Biden	Glenn	McConnell
Bingaman	Gorton	Mikulski
Bond	Graham	Mitchell
Boren	Gramm	Moseley-Braun
Bradley	Grassley	Moynihan
Breaux	Gregg	Murkowski
Brown	Harkin	Murray
Bumpers	Hatch	Nickles
Burns	Hatfield	Nunn
Byrd	Heflin	Packwood
Campbell	Helms	Pell
Coats	Hollings	Pressler
Cochran	Hutchison	Pryor
Cohen	Inouye	Reid
Conrad	Johnston	Robb
Coverdell	Kassebaum	Rockefeller
Craig	Kempthorne	Sarbanes
D'Amato	Kennedy	Sasser
Danforth	Kerrey	Simon
Daschle	Kerry	Simpson
DeConcini	Kohl	Smith
Dodd	Lautenberg	Specter
Dole	Leahy	Stevens
Domenici	Levin	Thurmond
Dorgan	Lieberman	Wallop
Durenberger	Lott	Warner
Exon	Lugar	Wofford

NAYS—8

Boxer	Feingold	Roth
Bryan	Jeffords	Wellstone
Chafee	Metzenbaum	

NOT VOTING—2

Riegle  
Shelby

So the amendment (No. 1720) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

AMENDMENT NO. 1728

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, is the pending order the Simpson

amendment on the Davis-Bacon matter?

The PRESIDING OFFICER. The question will be on amendment No. 1728 offered by the Senator from New Hampshire [Mr. SMITH].

Mr. LEVIN. As a former local official, I am very concerned over the burden Federal mandates can place on State and local governments. My own frustration over the lack of flexibility and responsiveness within the Federal Government to the unique needs and concerns of my community was one of the reasons I decided to come to Washington.

I voted against the amendment offered by Senator GREGG because I do not feel we can effectively address this complex, overarching problem in a piecemeal, case-by-case fashion. If we are going to end up with a workable, realistic solution, there are a number of fundamental questions that need to be answered about the implementation of legislation to assist State and local governments in complying with Federal mandates.

For example, there are many different views on what constitutes a mandate. How can we move ahead on legislation if we don't have an accepted definition for what we are trying to solve? Moreover, if we define a mandate, how broadly do we define the costs associated with it and how do we oversee the reimbursement process?

An important issue that has not been, I think, adequately brought out in the debate is that we need to consider the benefits of Federal mandates as well. For instance, when we mandated 55-mile-per-hour speed limits, there was a cost associated with it—signs had to be changed, enforcement measures needed to be put in place. But, we cannot ignore the benefits associated with the 55 mph speed limit—namely decreased automobile accident injuries and fatalities and therefore, reduced medical costs. Even if we are confident we can measure the cost, should we not also measure the benefits?

Questions such as these should not be an excuse for doing nothing, but they also cannot be ignored. We need to roll up our shirtsleeves and do the hard work if we want to get solid results. Senator GLENN is attempting to do just that in the Governmental Affairs Committee, and we should await the results of that effort.

Mr. METZENBAUM. Mr. President, I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. MITCHELL addressed the Chair. The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Mr. President, the vote just completed was the first of

three votes that have been ordered. The first was a regular 15-minute vote. I ask unanimous consent that the next two votes, including the one on the motion to table by the Senator from Ohio, be 10-minute votes.

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

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Ohio to lay on the table the amendment of the Senator from New Hampshire. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Michigan [Mr. RIEGLE] is necessarily absent.

I also announce that the Senator from Alabama [Mr. SHELBY] is absent because of illness.

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

The result was announced—yeas 52, nays 46, as follows:

[Rollcall Vote No. 118 Leg.]

YEAS—52

Akaka	Feinstein	Metzenbaum
Baucus	Ford	Mikulski
Biden	Glenn	Mitchell
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatfield	Murray
Breaux	Hollings	Pell
Bryan	Inouye	Reid
Byrd	Jeffords	Robb
Campbell	Johnston	Rockefeller
Conrad	Kennedy	Sarbanes
D'Amato	Kerrey	Simon
Daschle	Kerry	Specter
DeConcini	Kohl	Stevens
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wofford
Durenberger	Levin	
Feingold	Lieberman	

NAYS—46

Bennett	Faircloth	McConnell
Bond	Gorton	Murkowski
Boren	Gramm	Nickles
Brown	Grassley	Nunn
Bumpers	Gregg	Packwood
Burns	Hatch	Pressler
Chafee	Heflin	Pryor
Coats	Helms	Roth
Cochran	Hutchison	Sasser
Cohen	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Lott	Thurmond
Danforth	Lugar	Wallop
Dole	Mack	Warner
Domenici	Mathews	
Exon	McCain	

NOT VOTING—2

Riegle	Shelby
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So the motion to lay on the table the amendment (No. 1728) was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1730

The PRESIDING OFFICER. The question now occurs on Amendment No. 1730 offered by the Senator from Wyoming [Mr. SIMPSON]. The yeas and nays have been ordered.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I rise only for the purpose of clarifying the fact that we just had Davis-Bacon. We had Davis-Bacon yesterday. This is an additional Davis-Bacon. On the last vote there was a motion to table. So if you were opposed to Davis-Bacon you voted "aye."

I see no purpose in offering a motion to table on this particular amendment. I hope those who are opposed to changing the Davis-Bacon Act will vote "no."

VOTE ON AMENDMENT NO. 1730

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Wyoming. 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 Michigan [Mr. RIEGLE] is necessarily absent.

I also announce that the Senator from Alabama [Mr. SHELBY] is absent because of illness.

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

The result was announced—yeas 45, nays 53, as follows:

[Rollcall Vote No. 119 Leg.]

YEAS—45

Bennett	Exon	Mathews
Bond	Faircloth	McCain
Boren	Gorton	McConnell
Brown	Gramm	Murkowski
Bumpers	Grassley	Nickles
Burns	Gregg	Nunn
Chafee	Hatch	Pressler
Coats	Heflin	Pryor
Cochran	Helms	Roth
Cohen	Hutchison	Simpson
Coverdell	Kassebaum	Smith
Craig	Kempthorne	Stevens
Danforth	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner

NAYS—53

Akaka	Feinstein	Metzenbaum
Baucus	Ford	Mikulski
Biden	Glenn	Mitchell
Bingaman	Graham	Moseley-Braun
Boxer	Harkin	Moynihan
Bradley	Hatfield	Murray
Breaux	Hollings	Packwood
Bryan	Inouye	Pell
Byrd	Jeffords	Reid
Campbell	Johnston	Robb
Conrad	Kennedy	Rockefeller
D'Amato	Kerrey	Sarbanes
Daschle	Kerry	Sasser
DeConcini	Kohl	Simon
Dodd	Lautenberg	Specter
Dorgan	Leahy	Wellstone
Durenberger	Levin	Wofford
Feingold	Lieberman	

NOT VOTING—2

Riegle	Shelby
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So the amendment (No. 1730) was rejected.

Mr. INOUE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

AMENDMENT NO. 1722

Mr. BAUCUS. It is now my intention to go to amendment No. 1722, the amendment offered by the Senator from Louisiana, Senator JOHNSTON, concerning offshore royalties.

Essentially, Mr. President, this is a matter which was brought up in the Energy Committee and reported out of the Energy Committee. It is a bill that is at the desk. I understand several Senators have an interest in this measure. That is why this measure has not proceeded to the full Senate.

It is for that reason, primarily, Mr. President, that I do not think it would be appropriate for that measure to be offered as an amendment to the Safe Drinking Water Act.

I think most Senators want the Safe Drinking Water Act to be passed fairly quickly. I think it is important we pass the Safe Drinking Water Act.

It probably behooves us not to unnecessarily complicate it. This amendment, if it were adopted, would require a more complicated conference and would somewhat place the whole bill in jeopardy. I do not want to overstate that point.

But, more importantly, this measure, more appropriately, lies in another arena, another forum, perhaps, to come up before the full Senate. But it should not be on this bill.

Mr. President, for those reasons, I move to table the amendment and I ask for the yeas and nays.

Mr. President, I withhold the tabling motion at this point.

The PRESIDING OFFICER. The Senator withholds his motion.

The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I do not intend to stand in the way of the Senator from Montana's offering his motion to table, and I support him. But I want the Members of this body to understand what this amendment is all about.

This amendment would make it possible for the Secretary of the Interior to eliminate the royalties that are presently paid or to be paid in the future from oil leases. We have enough trouble trying to balance the budget around here without giving the Secretary of the Interior the right to vitiate an obligation entered into between an oil company and the Federal Government. If this motion to table is not to be agreed to, I know I as well as a number of other Senators are prepared to debate the subject and point out to the Senate all of the reasons why this just does not make sense.

If you are a conservative Member of the U.S. Senate, I do not believe you can willingly agree to eliminate the obligation that oil companies have

made to the Federal Government to pay royalties in connection with offshore leases. I say to my colleagues, no matter what your political philosophy is, this is no time for this Government to be giving away or forgiving debts or obligations that have been incurred in the normal course of business.

I do not intend to speak to the issue any longer. It is my thinking the motion to table in all likelihood will be agreed to because certainly this amendment does not belong on this bill. There is another bill at the desk on this very subject. If and when it comes up, perhaps we could debate this at some length. But if we pass the Clean Water Act, I hope the Baucus motion to table will be agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, I think it is only fair, if the Senator from Ohio wishes to speak on the amendment, that somebody have a moment to respond to him.

This does not—keep it in mind—this does not cost the Federal Government any money. You cannot get royalties from a mineral that is not produced. And the idea is that these are so deep and so complex they will not be produced without some relief. Once they are produced, guess what. The United States gets some money. The United States gets some wealth. The Treasury retrieves some income. Absent that, there is no income.

The Senator from Ohio's motion to table, or agreement to it, does nothing but cost this country money.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I would like to remind my colleagues that realism dictates that unless there is an incentive, the industry is not going to go out in the deeper depths or in the ice fields offshore in Alaska to initiate exploration and production. The Senator from Wyoming is quite correct. There is not going to be any revenue lost. We are talking about using new technology to go out and drill safely in frontier areas where there is absolutely no existing infrastructure of any kind. There is no pipeline. You have, perhaps in my State, ice conditions where you have to build islands out there. Unless there is an inducement for a lower royalty, we will simply import more oil, we will export our dollars. And that is just what is happening.

So it is not a matter of giving anything away. For Heaven's sake, what we are doing now is importing more than half our oil, we are exporting our dollars, exporting our jobs. We talk about the balance of payments around here. Half of it is the cost of imported oil. That is what it is. The other half is Japan. For Heaven's sake, let us be re-

alistic and recognize we are talking about U.S. jobs and U.S. high technology to develop these frontier areas.

What do you think the industry is going to do? As my friend from Ohio knows, unless the inducement for a return is there, they are going to import from overseas, and that is just the reality.

So I urge my colleagues to recognize facts for what they are. The industry does not invest this kind of money unless there are prospects for a return. But if you do not have pipelines and do not have an infrastructure, there has to be an inducement, and the inducement is lower royalties. And you are not talking about losing anything. You are talking about a significant gain to the prosperity of the United States through jobs and taxation and the sales of equipment from Ohio and other States.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I think the sides are pretty well delineated here. As we can tell, this is quite controversial; frankly, without reason. I do not think it should be on this bill. Without going into the merits, I urge us to vote in support of the tabling motion. I might say, if this amendment is on this bill, its outcome is somewhat problematic because we would have to conference with the House Natural Resources Committee, the House Merchant Marine Committee, and I think we all know that makes it unlikely the bill would survive conference.

The PRESIDING OFFICER. If the Chair can state the parliamentary position, the question occurs on amendment 1734, offered by Senator CHAFFEE on behalf of Senator HATCH.

The Senator from Montana may call for the regular order with regard to amendment 1722, and that amendment would then recur.

VOTE ON MOTION TO TABLE AMENDMENT NO. 1722

Mr. BAUCUS. Mr. President, I call for amendment 1722.

The PRESIDING OFFICER. The pending question is amendment 1722.

Mr. BAUCUS. I move to table the amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Alabama [Mr. SHELBY] is absent because of illness.

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

The result was announced—yeas 65, nays 34, as follows:

[Rollcall Vote No. 120 Leg.]

YEAS—65

Baucus	Gorton	Moseley-Braun
Biden	Graham	Moynihan
Bingaman	Grassley	Murray
Boxer	Gregg	Nickles
Bradley	Harkin	Nunn
Bryan	Hollings	Packwood
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Chafee	Kassebaum	Reid
Coats	Kennedy	Riegle
Cohen	Kerrey	Robb
Conrad	Kerry	Rockefeller
Danforth	Kohl	Roth
Daschle	Lautenberg	Sarbanes
DeConcini	Leahy	Sasser
Dodd	Levin	Simon
Dorgan	Lieberman	Smith
Durenberger	Mack	Specter
Exon	Mathews	Warner
Feingold	Metzenbaum	Wellstone
Feinstein	Mikulski	Wofford
Glenn	Mitchell	

NAYS—34

Akaka	Dole	Lott
Bennett	Domenici	Lugar
Bond	Faircloth	McCain
Boren	Ford	McConnell
Breaux	Gramm	Murkowski
Brown	Hatch	Pressler
Burns	Hatfield	Simpson
Campbell	Heflin	Stevens
Cochran	Helms	Thurmond
Coverdell	Hutchison	Wallop
Craig	Johnston	
D'Amato	Kempthorne	

NOT VOTING—1

Shelby

The motion to lay on the table the amendment (No. 1722) was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas, the minority leader.

SENATOR THURMOND'S 14,000TH VOTE

Mr. DOLE. Mr. President, this is the time when tourists come to Washington, DC, to tour landmarks like the Washington Monument, the Lincoln Memorial, and the Jefferson Memorial.

I always remind Kansans to go to the Senate gallery so they can see another Washington landmark—our colleague, Senator Strom THURMOND. Senator THURMOND's record of service to America and to South Carolina is truly remarkable. It is a record that stretches from the beaches of Normandy, to the South Carolina Governor's office, to this Chamber.

The fact is that not one of Senator THURMOND's 99 colleagues has ever served in the Senate without him. He has been here every day for nearly 40 years—and usually he is the first one in the Chamber in the morning, and he is the last one to turn out the lights at night.

I just wanted to take a minute this afternoon to salute Senator THURMOND on reaching another milestone. On May 5, Senator THURMOND cast vote number 14,000 in his Senate career.

Some have said that Senator THURMOND's first vote in the Senate was to

vote for Julius Caesar as majority leader. I do not know if that is true, but I do know that this Chamber is a better place because of the senior Senator from South Carolina.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I wish to thank my able friend from Kansas for his kind remarks. He is a remarkable leader in the Senate. He served with great distinction as a soldier in World War II, where he was almost killed in battle. We are proud of his service as a soldier and a statesman.

So far as my service is concerned, I am very proud to have represented South Carolina all these years. We have the greatest country in the world. In order to retain the freedom and liberties that we have inherited, we must maintain a strong defense.

We are proud of this Nation and proud of Bob DOLE.

Thank you very much.

(Applause, Senators rising.)

SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The question again recurs on amendment No. 1734 offered by Senator CHAFEE on behalf of Senator HATCH.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I move to reconsider the vote by which the Johnston amendment was tabled.

Mr. CHAFEE. Mr. President, I would call up amendment—

The PRESIDING OFFICER. The business before the Senate is the motion to reconsider.

Mr. CHAFEE. I move to table the motion to reconsider.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1734 AS MODIFIED

Mr. CHAFEE. Mr. President, as I understand it, amendment 1734 is now before us.

The PRESIDING OFFICER. That is correct.

Mr. CHAFEE. I send a modification to the desk in behalf of Senator HATCH.

The PRESIDING OFFICER. For clarification, is the Senator sending to the desk a second-degree amendment or a modification?

Mr. CHAFEE. It is a modification.

The PRESIDING OFFICER. A modification of the first-degree amendment. The Senator has that right. The amendment is so modified.

The modification is as follows:

On page 124, after line 11, insert the following new paragraph:

“(4) SCHEDULE OF INSPECTIONS.—

“(A) IN GENERAL.—The Administrator or authorized representative of the Adminis-

trator shall conduct inspections undertaken pursuant to this subsection during the normal operating hours of the establishment, facility, or other property.

“(B) SMALL SYSTEMS.—(1) For a public water system serving a population of 3,300 or less, the Administrator or authorized representative of the Administrator shall, to the extent practicable—

(i) notify the person referred to in paragraph (1), at least 3 days before the inspection, of the time when the inspection is scheduled to occur, and

(ii) schedule the inspection at a mutually convenient time.

“(C) WAIVER.—The Administrator or an authorized representative of the Administrator may waive the requirements of subparagraphs (A) or (B) if the Administrator or authorized representative of the Administrator determines that it may be necessary to conduct an inspection to protect public health.”

The PRESIDING OFFICER. Is there further debate on amendment No. 1734?

Mr. CHAFEE. As modified.

The PRESIDING OFFICER. As modified.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. The committee has looked at the amendment, including the modification, and urges the Senate to adopt it.

The PRESIDING OFFICER. Is there any further debate on amendment No. 1734, as modified? Is there any objection?

Mr. CHAFEE. I wonder if the Chair would withhold 1 minute.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Montana.

Mr. BAUCUS. Mr. President, again, the committee has examined this amendment, and we urge its adoption.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment of the Senator from Utah.

The amendment (No. 1734), as modified, was agreed to.

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

Mr. CHAFEE. 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.

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

YASSER ARAFAT

Mr. SPECTER. Mr. President, I have informed the managers of my interest in speaking for just a few moments on a matter of substantial importance. I shall be brief because I know the managers want to proceed with the bill.

I want to call my colleagues' attention to a tape recording of PLO Chief Yasser Arafat urging a holy war on Jerusalem which poses a clear and

present danger of additional violence, notwithstanding the commitments of the PLO and Arafat in the Israeli-PLO accord and which threatens peace in the Mideast.

This is a matter that the Congress of the United States and the Senate of the United States and really all Americans are going to have to be concerned about in light of what is happening in the Mideast and in light of the very substantial commitments which the Israelis have made in the Israeli-PLO accord and which the United States has made in backing up that accord.

We are going to have to be insistent and make no mistake about our demands that the commitments of the PLO be maintained. What has apparently happened here, from all the news reports, is that when Arafat was in Johannesburg attending the inauguration of President Nelson Mandela, he was speaking in a mosque where they could not understand Arabic. Arafat spoke in English and talked about a jihad or a holy war in order to retake Jerusalem. And now Arafat apparently in Oslo today has said that the jihad, which is the word for a holy war, was really meant to be an effort to peacefully take Jerusalem.

Mr. President, that simply does not wash. You have a very volatile situation in the Mideast at the present time.

In an extensive article in today's New York Times which cites the violence, there is the report of the shooting to death of two Israeli settlers by Islamic militants just south of the West Bank town of Hebron. There is a reference in this article to the at-risk position of some 5,000 Israeli settlers on the Gaza Strip, and a citation and the reference here to some 130,000 settlers in Israeli-held territory which will be turned over to the PLO, and an especially high-risk situation for some 450 settlers referred to in this perennial flash point where religious and nationalistic feelings are especially intense.

The mayor of Jerusalem, Mayor Ehud Olmert, has called upon Arafat for a specific apology and for a specific declaration that the PLO will be following and observing their commitments under the Israeli-PLO accord.

Mr. President, there has been very substantial evidence of violations by the PLO. They have been logged by the Zionist Organization of America, by the national president, Mr. Morton A. Klein, a very distinguished Philadelphia who brings these matters to my attention with regularity, and to others in this body. And I, in turn, bring these matters to the attention of my colleagues.

Mr. President, I ask unanimous consent that at the conclusion of my comments a full statement of the Associated Press dispatch from May 17 be printed in the CONGRESSIONAL RECORD which recites the background of the

tape recording of Arafat's call for a holy war; that the summary of the ZOA reports on violations for the week of May 4 through May 11 and the week of May 11 through May 18 be included in the RECORD, together with the article from the New York Times from today, May 18, which sets forth in some detail the background of what will enable me to abbreviate my comments at the present time.

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

(See exhibit 1.)

Mr. SPECTER. Mr. President, there is a somewhat longer article which appears in today's Wall Street Journal which details the background of the controversy over the holy sites and sets forth in some detail the concerns of Jerusalem's Mayor Ehud Olmert about Arafat's vow to pray in Jerusalem, which is a matter of some historical importance, and puts in perspective the current controversy.

I ask unanimous consent that be printed in the RECORD at the conclusion of my remarks as well.

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

(See exhibit 2.)

Mr. SPECTER. Mr. President, in essence, we are facing a situation of tremendous tension. I am concerned about it as a U.S. Senator. I am concerned about it also in terms of the reports which I have received a few months ago from relatives who live in Jerusalem. Within the past hour and a half I talked to my sister, Hilda Specter Morgenstern and her husband, Arthur Morgenstern, who relate to me the on-the-spot concerns in Jerusalem about what is happening.

It was a historic moment when President Clinton—and I again compliment him for what he did on September 13 of last year in bringing together Arafat and Rabin on the White House lawn. It was a moment for me of some mixed emotions seeing Arafat honored at the White House of the United States of America after his long, notorious record for terrorism, including the murder of the U.S. Chargé d'Affaires in 1974, and for the PLO's complicity, and Arafat's personal complicity, for the murder of Mr. Klinghoffer on the *Achille Lauro* and for what has happened.

But when the Israelis and Prime Minister Rabin are willing to make this arrangement, it seems to me the United States ought to be supportive. But when these acts of violence continue, and when Arafat, the signatory to these arrangements, who has made the promises all around the world, promises which I heard personally when a good many Senators had a chance to meet with Arafat, it seems to me that this is something which the Senate has to focus on, the Congress has to focus on, and America has to focus on to see to it that these commitments that

Arafat has made are lived up to; and that we not permit him to talk where he thinks he is off the record, talking secretly and talking about the jihad, a holy war, and we have to insist that those commitments be maintained.

I thank my colleagues for these few moments.

I yield the floor.

#### EXHIBIT 1

[From the Wall Street Journal, May 18, 1994]

#### DESPITE PEACE PACT, JERUSALEM'S HOLY SITES KEEP PASSIONS BURNING

(By Peter Waldman)

JERUSALEM.—In a few weeks, shortly after he settles into his new home in Jericho, Yasser Arafat hopes to make the 30-minute drive through the Judean hills to pray here at the al-Aqsa mosque.

Ehud Olmert, Jerusalem's mayor, has vowed to rally 500,000 Jews to stop him. Bloodshed from an Arafat pilgrimage, the mayor has predicted, will cause "10 times" more victims than February's Hebron massacre, in which a Jewish extremist killed 30 Palestinians.

With the signing of the Gaza-Jericho peace pact in Cairo, the Israeli and Palestinian haggling over postage stamps and passports is nearly finished for now. But as the pique over Mr. Arafat's proposed pilgrimage to Jerusalem suggests, the most volatile issues between Muslim and Jew remain far from resolved. Chief among them is the abiding dispute over the spot here known to Jews as the Temple Mount. The ancient stone plaza, where King Solomon's temple once stood, holds the Aqsa mosque and the gold-plated Dome of the Rock, Islam's third-holiest shrine.

#### AGE-OLD CONFLICT

As Mr. Arafat and the PLO edge ever closer to Jerusalem, this age-old conflict is only getting more explosive.

"In very, very sanguine terms," says Joel Lerner, an Israeli and self-described freelance scholar, "if the Hebron incident derailed the peace process for a month, a vaguely similar operation on the Temple Mount would derail it forever."

Mr. Lerner, an Orthodox Jew from New York, ought to know. He has spent six of the past 20 years in Israeli prisons for conspiring to blow up the Dome of the Rock and for plotting a religious coup against the Israeli government.

As hard as the peace negotiators have tried, the sacred and the secular cannot be separated in the holy land. In Yasser Arafat and Yitzhak Rabin, the PLO and Israel have come close. Both leaders are pragmatic centrists who have long eschewed religious zealotry. But their peace treaty, based on their common secular ground and focusing on things like police powers, education and taxes, necessarily skirts the religious heart of the conflict: Who, in the end, will rule the holy sites in Jerusalem? Until that dispute is resolved, coexistence will remain dicey.

In the Cairo agreement, "Religious Affairs" are relegated to item No. 15 in a 38-point list of powers being transferred to the Palestinians. The accord pledges free access to all religious sites in the PLO's domain. Beyond that, it preserves Israeli control over an ancient synagogue in Jericho, and grants Palestinians power over a 13th-century mosque near Jericho where Muslims believe Moses is buried. Finally, on at least three occasions a year, it gives pilgrims the right to visit, "under the Palestinian flag," the site called al-Maghtas on the Jordan River, the

spot where John the Baptist is believed to have baptized Jesus.

The accord doesn't mention Jerusalem or its sacred sites—dilemmas that the PLO and Israel have agreed to postpone until "final-status negotiations" begin in two years. Despite Mr. Arafat's often-expressed desire to spite the Aqsa mosque, Oded Ben-Ami, a spokesman for Prime Minister Rabin, says the PLO leader has not raised the issue of a visit and that, for the moment, such a pilgrimage remains "hypothetical."

Still, swords have already been drawn. In an overpowering image of where Mr. Arafat believes he is heading, a massive color photograph of the Dome of the Rock papers the wall behind his desk in Tunis. Jordan's King Hussein, who has never renounced custody of the Jerusalem shrines since losing them in the 1967 war, has commissioned archaeologists to prove Jerusalem was an Arab city before Jews settled here 3,000 years ago. And in his cave-like office beneath the Dome of the Rock, Sheikh Mohammed Said al-Jamel, the cleric in charge, heaps scorn on Jewish claims to the Temple Mount. "All that they believe is superstition," he says.

Nor are militant Jews watching all this from the sidelines. Since the Hebron massacre, police have detained a dozen or so alleged Jewish extremists without charges, and revoked the gun permits of some 50 others. But these people comprise just a small fraction of the thousands of ardent, messianic Jews living in Israel and the occupied territories.

For the messianists, the creation of the state of Israel in 1948 and its expansion to its biblical borders in 1967 began nothing less than a process of divine redemption that must now continue at all costs.

The heart and soul of messianic Judaism is the 3,000-year-old Temple Mount, or what Muslims call in Arabic al Haram ash Sharif. The tree-lined rectangular area, roughly the size of three football fields, is so hotly contested by Muslims and Jews that no Israeli government, since capturing the site in 1967, has had the nerve to seize it from its Muslim administrators.

To messianic Jews, continued Muslim control of the Temple Mount constitutes an insufferable indignity.

"Until the holy of holies is under our sovereignty, it means we're still living in the Diaspora," say Rabbi Shlomo Goren, one of Israel's pre-eminent religious figures and the army rabbi who blew the shofar, or ram's horn, when Israeli troops captured the Temple Mount in 1967. "It means we are not yet living in a Jewish state."

Jews believe the Temple Mount is where Abraham bound his son Isaac for sacrifice, where Solomon erected the so-called First Temple for prayer and animal offerings, and where it was later rebuilt by Herod the Great.

After the Romans destroyed the Second Temple in 70 A.D., Jews have longed to rebuild a third one. Many messianic Jews believe a third temple is a prerequisite for the coming of the Messiah.

"Since the Romans destroyed the Second Temple, it's as if Judaism has had its heart extracted and is living on borrowed time," says Mr. Lerner.

There is one big problem: For the past 1,200 years, the Temple Mount has been the foundation of the Aqsa mosque and the Dome of the Rock, which covers the spot from where Muslims believe Mohammed ascended to heaven on a staircase of light. Jews haven't been allowed to pray regularly at the site for at least a millennium.

That is why Mr. Arafat's plans to pray on the Temple Mount pose such an affront to many Jews today. Not only does the PLO leader remain reviled in Israel for directing terrorism against the Jewish state, but equally important, his claim to Jerusalem threatens to interfere with Jewish destiny, messianic Jews believe. Jerusalem's Mayor Olmert recently expressed this fear in a different way to the Jerusalem Report magazine, warning that if Mr. Arafat ascends the Temple Mount to pray, he will declare a Palestinian state and never leave.

To counterattack, militant Jews have embarked on a campaign to get Muslims off the Temple Mount once and for all.

"We are living at a time when God is correcting the mistakes of history," says Gershon Salomon, a history professor and leader of Temple Mount Faithful, a Jewish group dedicated to wresting control of the sacred site. "Al-Aqsa and the Dome of the Rock must be removed back to Mecca, the place from where they came. We will rebuild them stone by stone. We have the means to do it."

Though the Temple Mount has become a lightning rod for Jewish extremists, most less-religious Jews—inside and outside Israel—don't give the sacred site much thought these days. The Reform movement's prayer book doesn't even mention the ancient temple rituals, although nearly one-quarter of the Torah's 613 laws deal with the temple's animal sacrifices, writes Rabbi Joseph Telushkin in his book, "Jewish Literacy." The Conservative denomination's prayer book celebrates the temple cult as part of ancient Judaism, but expresses no desire to reinstate it.

Only Orthodox Jews continue to pray regularly for the rebuilding of the temple and for animal sacrifices to be offered there again. But even many of these observant Jews find the prospect of reviving animal offerings, on the eve of the 21st century, a bit far-fetched.

"It would be hard for me, as a mainstream Orthodox rabbi, to assume that if the temple was rebuilt, we'd pick up where we were 2,000 years ago," says Rabbi Michah Halpern, a historian in Jerusalem. Rather, he says, it is the act of "yearning" for the third temple and the Messiah that counts. "We are not involved in the actual building processes themselves," he says.

This modern reticence made it easy for then-Israeli Defense Minister Moshe Dayan, shortly after Israel's 1967 victory, to return control of the Temple Mount to its Jordanian-run Islamic board, called the waqf. At the time, many rabbis were warning Jews to stay off the Temple Mount anyway, lest they commit the "arrogance of arrogance" of treading on the "holy of holies," where in ancient times only the high priest was allowed to go. (Nobody knows precisely where the hollowed ground lies.) The waqf took back the keys; few Jews complained.

But over the years, Temple Mount experts, including Rabbi Goren, published diagrams of the ancient site showing the many areas where Jews could safely roam. The messianists, whose numbers have steadily grown since 1967, had their calling: Take back the Temple Mount.

Small groups sprang up to lead Jewish worshippers on to the mount in defiance of the waqf. Israeli police had to seal off ancient tunnels discovered under the site to foil Jewish efforts to raze the Muslim shrines. Nearby, a yeshiva, a religious school, was founded to train future priests for duties in a rebuilt temple. And the Temple Institute, funded in part by the Israeli

government, reproduced all the necessary biblical trappings—from sacrificial urns and altars to priestly vestments and breastplates—to perform the temple rituals again. Suddenly, Jews, who had waited millenniums to restore the temple, were beginning the process themselves.

"When you say the Messiah will rebuild the temple later on," says the institute's Rabbi Chaim Richman, "you're basically shirking the responsibility yourself."

The temple cause spread to non-Jews as well. In Canton, Miss., a Christian preacher and cattle breeder named Clyde Lott, after reading Genesis one night, contacted his state's trade office to find out if Israel had the red cows it would need to perform proper, biblical purification rites in a third temple. It didn't. Over the past five years, Mr. Lott, working with the Temple Institute and some American Christian backers, has developed a breed of red cow that he hopes will spawn "the livestock restoration" of Israel, he says. The first shipment of 500 cows is due to arrive in Israel in November.

The temple's messianic calling dove-tailed with the calling of another group of zealots: Israel's few-thousand unalloyed, anti-Arab fanatics. Today, the prospect of Mr. Arafat moving to Jericho and praying in Jerusalem has made these people more agitated than ever.

"Zionism and Arab nationalism are diametrically opposed; you can't wish that away," says Israel "Keith" Fuchs, co-founder of the Temple Mount Yeshiva, a militant Jewish school which recently had to shut down after both its top rabbis were detained by police. Mr. Fuchs, 30, has been in and out of police custody since he was 16. He and his Temple Mount cohorts provide a telling picture of the passions, and dangers, looming ahead.

For Mr. Fuchs, it all started in Santa Monica, Calif., he says, where his family moved from Brooklyn in 1978. One afternoon, another child kicked his little sister and called her "a Jew bitch." Soon after, Mr. Fuchs joined militant Rabbi Meir Kahane's Jewish Defense League, and was arrested several times for fighting with American Muslims and neo-Nazis. He moved to Israel in 1982, only to serve 22 months in prison for shooting up an Arab bus near Hebron. Later, he was investigated by the Federal Bureau of Investigation, but never charged, in connection with several bombings in the U.S., including the deaths of an Arab-American activist and a suspected Nazi war criminal.

Last fall, Mr. Fuchs helped start the Temple Mount Yeshiva with Rabbi Avraham Toledano, a former leader of the late Rabbi Kahane's Kach party. Rabbi Toledano was arrested at the Tel Aviv airport in November with weapons, bomb-making gear and \$50,000 in cash in his luggage. A third yeshiva founder, Baruch Ben-Yosef, born Andy Green in Brooklyn, was detained without charges in March. A long-ball hitter in the Jerusalem softball league, Mr. Ben-Yosef, 35, has served several prison terms for attempting to bomb Arab targets, including the Dome of the Rock.

Their yeshiva attracted a mix of a dozen or so veteran messianists and spiritual seekers, most drawn to it by the dotting charm of Mr. Ben-Yosef.

On their daily trips to the Temple Mount, the yeshiva students were kept from praying by Israeli police. But they were allowed to march around the plaza, shadowed by waqf guards, who radioed for reinforcements whenever prayer was suspected. A student was once hauled off for rubbing his eyes, a

gesture of worship, the guards said. This spring, the yeshiva had planned a guerrilla sacrifice of a lamb on the Temple Mount for Passover, which would have been the first real Passover lamb in 2,000 years, students claim. But those plans, like the yeshiva itself, fell apart after Mr. Ben-Yosef's arrest.

Now, the students are moving on to other activities. Mr. Fuchs, the former JDL activist, has retreated to his computer-graphics company in Jerusalem, though he still carries a concealed pistol—with a permit—under his jacket. Daniel Leubitz, 19, is going home to Cleveland to start a local JDL chapter to combat "black anti-Semitism," he says.

"We've spent many dollars on the phone" from Cleveland, says Mr. Leubitz's worried mother, Amalia, "reminding Dan that Abraham had doors on all sides of his tent to welcome all people."

To Sean Casper, chairman of the Movement to Rebuild the Third Temple, the "mindboggling" thing isn't that Mr. Arafat may soon pray on the Temple Mount but that Israel may let him. "This country has never had a problem doing what it wants to do," he says. "Our problem is we don't know what we want."

Mr. Casper, a lawyer who represents several of the Jewish militants in detention, doesn't think it would take much to shake things up. "It would be easier to blow up al-Aqsa than it was to kill 30 people in the Hebron mosque," he says. "If I wanted to, I could do it myself."

#### EXHIBIT 2

[From the New York Times International, May 18, 1994]

#### ISLAMIC MILITANTS SLAY 2 SETTLERS IN HEBRON

(By Clyde Haberman)

HEBRON, ISRAELI-OCCUPIED WEST BANK.—Two Israeli settlers were shot to death today by Islamic militants just south of this West Bank town, and Israel's army commander warned that the violence might be a foretaste of what settlements would face under Palestinian self-rule in the Gaza Strip.

The question of what, if anything, to do about Jewish settlements in Gaza and the West Bank has been relatively muted lately.

But the killings today, which followed clashes in Hebron on Monday that left at least a dozen Palestinians wounded by settlers and soldiers, made clear that the issue is very much alive and is a factor in the success or failure of the exercise in Palestinian self-government that has begun in Gaza and Jericho.

#### DOUBTS ABOUT THE ACCORD

Settlers and other Israelis who question Israel's wisdom in signing the self-rule agreement with the Palestine Liberation Organization are likely to have deeper doubts after the attack today. Two Jews were killed and a third seriously wounded in the head in an ambush as they drove south of Hebron, an area still under Israeli control. An armed wing of the Hamas group of Islamic militants claimed responsibility.

Later, the army chief of staff, Lieut. Gen. Ehud Barak, cautioned that the attack today was probably not the last, either in the West Bank or in Gaza.

His remarks were significant because security for roughly 5,000 Israeli settlers in the Gaza Strip—most in a cluster of outposts known as Gush Qatif, along the Mediterranean coast—is a basic component of the Israeli-P.L.O. agreement.

For many Israelis, a critical test of the accord is whether those settlers stay safe on

their islands in a sea of hostility. They were unlikely to be reassured after hearing General Barak say today, "I don't rule out terrorist attacks on the roads to Gush Qatif."

While Israeli forces are largely pulling out of Gaza, they will remain at border crossings and in newly created buffer zones around the settlements, patrolling roads with Palestinian police officers to assure that Jews there move safely between their homes and Israel.

The troop withdrawal from the rest of Gaza, under way in earnest for a week, may be completed on Wednesday. Today, the Israelis formally handed over civil authority in Gaza to the Palestinians, as they did in Jericho on Friday, but a government is not yet in place, and so no real changes in daily life are expected right away.

For Palestinians, the fighting in Hebron on Monday, rekindled their calls for removing the estimated 130,000 settlers in Israeli-held territories, especially the 450 in this perennial flash point, where religious and nationalist feelings are intense.

The settlements are such a delicate issue that negotiations on their fate have been delayed by Israel and the P.L.O.—presumably for at least two years, although under their agreement the matter could be raised at any point.

But the question clearly will not go away. That was guaranteed by the Hebron massacre on Feb. 25, when a settler killed at least 29 Palestinians at prayer. After that, Israeli Cabinet ministers said they were ready to evict the Jews from Hebron for security reasons. But Prime Minister Yitzhak Rabin, while unsympathetic to the Hebron settlers, insisted that the issue was not now on his agenda.

Although the matter then receded from public attention, its immediacy was reaffirmed when a group of armed settlers here walked to a religious site on Monday, the Jewish holiday of Shabuoth, and got into an argument with Arabs near a mosque.

What happened is not clear. The Jews say that the Arabs threw stones and that they fired their guns in self-protection. Arabs say that the Jews attacked first and that only then did they respond with rocks.

Either way, the incident reignited a town that does not need much to throw it into turmoil. At least a dozen and perhaps as many as 18 Palestinians were shot in the fighting, both by settlers and by Israeli soldiers who showed up and become embroiled in their own clashes with the Arabs.

At a weekly meeting today, some Cabinet ministers accused the settlers of having been provocative with their Monday walk through town, which army officers said had not been coordinated with them in advance, as required.

The Israeli radio quoted Mr. Rabin as having called the settlers' actions unjustified, and other officers were troubled by reports that the Hebron Jews, after hearing about the killings today, walked through the main Palestinian market, overturning stands and destroying merchandise.

#### SHARON DEFENDS SETTLERS

Hebron's Mayor, Mustafa Natshe, called the settlers "detonators" ready to explode, and demanded that they be removed. But Ariel Sharon, the former Defense Minister, defended the right of Jews to be in Hebron and to defend themselves when attacked. "What are you expecting—that they should step quietly, or maybe that they should run away?" he said.

In the hope of reducing tensions, at least for now, the army sealed off Hebron to outsiders and put the town under curfew. Among

those under restrictions were the 160 members of an observer force of Norwegians, Danes and Italians that was created after the massacre, ostensibly to protect local residents and help keep the town calm.

But the clashes on Monday underscored how limited in power this force is. Its members carry no weapons, they have no police functions and if the Israeli Army restricts their movements—as it did on Monday and today—there is not much for them to do except to file reports to an Israeli-Palestinian committee and to their governments.

"We're just sitting in our foxholes," said Bjarno Sorensen, a spokesman for the force. The situation was "a little bit frustrating," he acknowledged, but he said the monitors hoped "to be on the move again soon."

#### ARAFAT CALL FOR JIHAD COULD THREATEN PEACE ACCORD

JERUSALEM.—A tape recording of PLO chief Yasser Arafat urging a "holy war" for Jerusalem could stall progress towards full Palestinian autonomy, Prime Minister Yitzhak Rabin said Tuesday.

The tape was played by Israel radio which said it received Arafat's May 10th speech at a mosque in Johannesburg from the South African Jewish community.

"You have to understand our main battle isn't how much we can achieve from them here or there. Our main battle is Jerusalem," Arafat said.

He added that Israel had promised in a letter that Jerusalem could be discussed three years from now, when negotiations begin over a permanent settlement.

"You have to come and to fight and to start a Jihad to liberate Jerusalem, the historical shrine. And this is very important," Arafat said.

Rabin said Arafat's comments violated the peace agreement signed in Cairo on May 4 that led to the implementation of autonomy.

"If he indeed called for a Jihad this is a grave violation to what he committed himself to in the letter to me he wrote and signed that led to the mutual recognition of Israel and the PLO," Rabin said.

"If this is indeed his call it will put into question the continuation of the process between us and the Palestinians. We will not be able to accept a violation of a PLO commitment not to be involved in violence and terror," he added.

Rabin added that Israel, in its accord with the PLO, agreed the issue of Jerusalem, holy to Jews, Christians and Muslims, could be raised when negotiations on a permanent settlement began.

Israel captured the Arab eastern sector of Jerusalem from Jordan during the 1967 Middle East war and later annexed it as part of its capital. The Palestinians see east Jerusalem as capital of their would-be state.

Rabin has repeatedly said that Jerusalem is not up for negotiation. On the question of Jerusalem, unlike the West Bank or Gaza Strip, Israelis are almost unanimous in opposing any territorial compromise.

Still fresh in their minds is pre-1967 Israel, when Jordanians banned Jews from their most holy site, the Western Wall.

Following the broadcast of Arafat's comments, the right-wing National Religious Party tabled a no-confidence motion in Parliament. Opposition parties demanded that the government release all secret annexes to its May 4th autonomy agreement with the PLO.

Rabin has denied any secret agreements. Members of Rabin's Labor party faction in Parliament also protested Arafat's comments and demanded a government response.

"If such things were really said, believe me, there will be a very determined and aggressive response," Police Minister Moshe Shahal said.

Deputy Defense Minister Mordechai Gur said that Arafat's comments could stem from the staunch opposition he faces on the Palestinian front but added that Israel would not allow the PLO chief to damage its credibility.

Uri Dromi, head of the Government Press Office, said he hoped Arafat would deny what "he allegedly said in the mosque" to allow the peace process to go forward.

"Up until now we have reason to be optimistic about the smooth transfer of authority and we hope that statements or expressions like he allegedly said in the mosque will not undermine the peace process," Dromi said.

ZIONIST ORGANIZATION OF AMERICA,  
New York, NY, May 12, 1994.

To: Senator Arlen Specter

From: Morton A. Klein, National President, Zionist Organization of America.

1. May 10, 1994: Arab terrorists fired at least 10 shots into an Israeli civilian bus near the Arab village of Mezrat-Asharkia, in the administered territories. Three passengers were wounded by the gunfire. The Popular Front for the Liberation of Palestine (PFLP), a faction of the PLO, claimed responsibility for the attack.\* Yasser Arafat has neither condemned the attack, nor taken any steps to "discipline" the PFLP.

2. May 4-11, 1994: Yasser Arafat gave no speeches encouraging the Palestinian Arabs to refrain from violence.

3. May 4-11, 1994: Yasser Arafat did not convene the Palestine National Council to delete those clauses in the Palestine National Covenant that call for the destruction of Israel.

ZIONIST ORGANIZATION OF AMERICA,  
New York, NY, May 18, 1994.

To: Senator Arlen Specter,

From: Morton A. Klein, National President, Zionist Organization of America.

1. May 12, 1994: Arab terrorists shot at an Israeli truck driver near the Israeli town of Mogaz, in the Gaza Strip. The driver was wounded. Hamas, a non-PLO group, claimed responsibility for the attack.

Yasser Arafat did not condemn the attack.

2. May 12, 1994: Arab terrorists shot at Israeli soldiers near the Jabalya refugee camp, in the Gaza Strip. None of the soldiers were wounded; when the Israelis returned fire, one of the terrorists was wounded. Responsibility for the attack was not immediately determined.

Yasser Arafat did not condemn the attack.

3. May 15, 1994: Arab terrorists in a van opened fire at Israeli bystanders were wounded. Hamas, a non-PLO group, claimed responsibility for the attack. Yasser Arafat did not condemn the attack.

4. May 17, 1994: Arab terrorists shot at an Israeli civilian auto travelling south of Hebron. Two Israelis were killed, and a third was seriously wounded. Hamas, a non-PLO group, claimed responsibility for the attack.

Yasser Arafat did not condemn the attack.

5. May 17, 1994: Israel Radio played a tape recording of a speech by Yasser Arafat in a mosque in Johannesburg, South Africa, on May 10, 1994, in which Arafat urged Arabs to launch a "holy war" to conquer Jerusalem.

6. May 11-18, 1994: Yasser Arafat gave no speeches encouraging the Palestinian Arabs to refrain from violence.

7. May 11-18, 1994: Yasser Arafat did not convene the Palestine National Council to

delete those clauses in the Palestine National Covenant that call for the destruction of Israel.

#### SAFE DRINKING WATER ACT AMENDMENTS OF 1994

The Senate continued with the consideration of the bill.

Mr. WALLOP addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. The regular order would be amendment 1715 offered by the Senator from Wyoming?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 1721

Mr. WALLOP. I ask that the regular order might be suspended and that I might talk on an amendment following that, No. 1721.

The PRESIDING OFFICER. It would also be in order to call for the regular order with respect to No. 1721.

Mr. WALLOP. Therefore, I will be addressing amendment 1721, which was offered earlier.

The PRESIDING OFFICER. That is the pending question.

The Senator may proceed.

Mr. DOMENICI. Mr. President, I wonder if the Senator will yield me 2 minutes for a brief colloquy.

Mr. WALLOP. Yes, I will yield for that purpose.

Mr. DOMENICI. If I can get the attention of Senator CHAFEE, last night, Senator BINGAMAN, my colleague from New Mexico, spoke on the floor about a very serious problem we have in our State—and Texas has the same problem and parts of Arizona—called the colonias.

The bill that I introduced along with Senator BOREN, Senate bill 1920, which was used to do some negotiating in behalf of the Governors and mayors, had in it protection authorization for funding for these unincorporated, small communities that are in terrible condition, with no water, no sewer, and they are in the United States. That is not in the bill that you introduced—you and the chairman—but I would like to ask, since we are not going to put any such funding on this bill—and with that I concur—is the position of the ranking member similar to that of the chairman, that when we get the next environmental bill, which may be the Clean Water Act, perhaps, that every consideration will be given to helping us get authorization for that, so that it might come out of the \$500 million that is already appropriated for disadvantaged communities?

Mr. CHAFEE. Mr. President, I want to assure the Senator from New Mexico, who has been vitally interested in this colonias situation, yes, we will give every effort to consider his special situation, the colonias situation, as it exists along the New Mexico-Mexican border, for authorization for those funds that have been appropriated.

Obviously, there will be a large demand upon the funds, and the question will be how to set some form of priority. But the answer is, yes, the next bill probably will be the clean water bill. If that does not come up for some reason, then there is the water resources bill that clearly will come along, and we can consider it on one of those other two—I think the Senator said on the next environment bill. There is a possibility that Superfund might come along, and that would not really be the bill to put it on. So either the clean water bill or the water resources bill.

Mr. DOMENICI. I thank my friend.

Let me close by saying that I have been working on this problem for quite some time. We did get some funding out of appropriations the year before last, and that money has not yet all been used. The problem is a severe one. I thank my good friend.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

AMENDMENT NO. 1721

Mr. WALLOP. Mr. President, I doubt that any of us, over the last couple of years has escaped noticing the fact that Americans actively fear their Government. They actively seek to serve it lest it take notice of them. This holds true not just of small businessmen and women, or ranchers, or farmers, or truckers, or dairymen, or bankers, or real estate operators; it holds true also of elected officials, county, and city officials. At the conclusion of my remarks, I will begin to describe some of the things that the EPA has done for my community of Sheridan.

The thing that is interesting about this concept of Americans being frightened of their Government is that they do not know where the Federal authority to do certain things comes from. They do not know who to blame. Senators and Members of Congress will come home and say, "I never expected them to do it that way. That is the bureaucrat, the regulator." The regulator will say, "We were authorized to do this under the legislation just passed," and there is no democratic accountability. Nobody for whom you voted can be nailed with this thought or credited with this thought.

So what this amendment of mine would do is to make the Safe Drinking Water Act regulations advisory in nature, allowing the States to choose which of those Federal regulations are appropriate and applicable within their boundaries.

Mr. President, this is not a reckless concept. This is a concept which says that those people who you know at home are going to be voting to adopt or choosing to adopt a set of rules and regulations that will guide them through the various intricacies of providing safe drinking water for their people.

I do not know very many local officials who are going to be willing to just up and say, "The heck with that, that is the Federal Government, we are not going to pay any attention to them. They are not going to do that." But there has been in the past—and I will say to the managers of the bill that this bill goes a long way toward redressing some of the utterly ridiculous concepts noted—namely, that we in Wyoming are testing for pesticides used only in Hawaii. The fact is that we would be naive to assume that under this bill, there will not be circumstances that will be deemed to be ridiculous within one State or other. And that which might be deemed to be ridiculous, because no hazard is being addressed or no safety credit is being created, might be a different thing in the State of Wyoming than the State of the occupant of the chair. But at least those who are elected and accountable and responsible to the citizenry will be the ones who get credited with, or blamed for, the acceptance of certain criteria in the provision of the safety standards.

The bill that we are considering today is one of the most important measures that this Congress will consider. Providing such an immediate and basic service as the delivery of clean and safe drinking water is something with which anyone can identify, even though the language in the bill, and the actual implementation of it is complex and extremely technical in nature. The beauty of this issue is that it graphically illustrates another basic concept, and that is the concept of federalism, the balance of power between Federal, State, and local governments, and what goes wrong when the balance tilts too far in one direction.

The reason consideration of this vital measure has been so contentious and has therefore been so delayed is that Americans are beginning to understand the consequences of allowing the Federal Government to assume all the power unto itself.

The 1986 amendments to the Safe Drinking Water Act have been described as an overreaction to the scare of contaminated drinking water. The result was to strangle this country in bureaucratic red tape. The standard setting and monitoring requirements were excessive, unnecessarily expensive, and not especially effective.

States, municipalities, and water providers all across America have been made to take action they know to be useless, and their taxpayers have been forced to foot bills they never should have received in the first place. We have seen time and time again where the Federal Government has ordered a community to tax itself. Mr. President, the concept of America when it was established was there ought not to be taxation without representation. Nobody I know believes the EPA to be

representation. We have reached the point of general recognition that a large, centralized Federal Government simply cannot answer to all the problems Americans face today.

The city manager from Casper, WY, told me that the Federal Government, through the EPA, will bankrupt this Nation, and it is a thought echoed all across America. We can no longer impose substantial and unaffordable burdens on municipalities and States.

My amendment does not just address the unfunded mandate issue, it goes further. It was a recognition that we have stripped responsibility from where it belongs—State and local politicians, who are immediately held accountable by their constituents, the persons that they have sworn to serve, and water utility professionals, who have dedicated their careers to protecting, preserving, safe drinking water to the customers and families. They are known at home, and the threat of doing wrong is clearly recognized by those at home. But the threat is balanced between the notion of accountability for the taxes and obligations assumed versus the risk understood.

People came to Congress in droves asking for help. What they wanted was strong public health protection through what they hoped would be reasonable, practical, and affordable regulation of the public drinking water supply. They wanted Congress to recognize that the goal of attaining safe drinking water depends on the unique circumstances of each locality, the local topography, the climate, the soil conditions, the specific water source, the mixture of contaminants present, and size and economic status. No single answer voted on here tonight could provide a blanket that covers all of America.

The Wyoming Association of Rural Water Systems wrote that they support a commonsense approach covering water systems, especially the small systems in the State. We believe that the State of Wyoming should be provided flexibility to address the specific considerations of each system rather than a one-size-fits-all policy determined by the Federal Government.

The National Rural Water Association asked simply that we allow water system administrators to do what is in the public interest, not just to be dictated to by Washington.

It is interesting, but not surprising, to see how Congress responded to the pleas for common sense. The original bill, S. 1547, would have imposed even more substantial costs and regulatory burdens accompanied by stringent law-enforcement provisions in order to bring swifter punishment. S. 1547 was opposed by the National Governors, the Conference of Mayors, the League of Cities, the Association of Counties, and nearly every rural water association in America.

Through compromise and hard work, S. 1547 was significantly changed until it became S. 2019, and now the managers of the bill have amended it further, and so have Senators, in an effort to make it more acceptable to more Americans. I applaud their efforts and thank them. They have taken a hesitant step in the right direction, but Congress can, and must, do more.

The amendment I am offering clarifies that the Federal role in this important issue of protecting the public health is advisory in nature. The Federal role is to provide financial and technical assistance and not to dictate impracticalities under the threats of draconian penalties. The amendment is simple. It allows States to choose which Federal regulations they feel are appropriate and applicable within their boundaries and to which they will submit to Federal oversight. Other regulations remain available for their information and thus are advisory in nature.

My amendment will make this a true Federal-State partnership and return responsibility, democratic responsibility, to those who best know their problems and how to resolve them.

The original act was supposed to establish a State-Federal partnership. It did not. This will not. The Environmental Protection Agency was to set national drinking water standards, and qualifying States were primarily responsible for their enforcement. As a part of this statutory scheme, however, Congress set out the initial State primacy requirement, and EPA was to prescribe by regulation the manner in which it would grant and withdraw State primacy. Specifically under the act, a State has primacy during any period for which the EPA makes a determination that the State satisfies certain requirements, including adoption of regulations that are no less stringent than the national primary drinking water regulations in effect.

In other words, there is no partnership. There is an adversarial role. EPA says, "Do this." And if the State says, "I will do it," then EPA says, "You can administer it." But if the State says, "These are not rational," the EPA says, "No, you cannot do it."

So there is no partnership, Mr. President. There is a role of ruler and ruled, and that is what this amendment seeks to eliminate.

It is a twisted view of primacy to insist that States adopt drinking water regulations that are no less stringent than the national primary regulations, and then order them to use their own resources to achieve those which are national.

My home State, Wyoming, has not obtained primacy because it simply cannot afford the cost and will not suffer the regulatory nightmares that accompany such authorities. Many other States, absent significant reform of

this act, may soon follow Wyoming's example.

On top of all the other problems, current law provides even a fine up to \$25,000 a day for violations. It often occurs because small systems simply cannot afford to comply with horrendous and unnecessary monitoring and paperwork provisions. There are towns in the State of Wyoming which might just as well turn over the keys of the city to the EPA because the fines are greater than the assessed valuations.

With this bill, we establish Federal administrative penalties for drinking water violations, and we increase the penalties for civil enforcement action. In addition, we will allow EPA to take an enforcement action within a State without providing the State the opportunity to initiate its own action. This is a dangerous precedent, indeed. My amendment would ensure that the Federal role is appropriately one of research, education, technical advice, and financial support.

Mr. President, let me conclude with a couple of interesting things. There is the experience of my town of Sheridan. An article in the Sheridan Press:

The Environmental Protection Agency is prepared to take immediate action against the city of Sheridan if the capital facilities tax is rejected by the voters on July 25.

Mr. President, most of us grew up in America thinking that taxation without representation meant that we had a vote. We had a say. We did not have someone in Washington saying, "If your voters do not agree with us and tax themselves, we will punish you," which is an amazing concept. That is what this amendment seeks to address.

Under the Safe Drinking Water Act, the EPA threatened the city of Sheridan with fines and penalties if they did not provide treated water taps along the Big Goose Valley. For the first time in EPA history, they chose to mediate the safe drinking water violations. It was a very good process. We worked with the safe drinking water people in my town. We came up with a solution. The city and the county envisioned building an entire new water delivery system countywide.

Mr. President, the cruel thing about it is that the water supply was part of the mediated solution, but guess what happened. The safe drinking water people do not talk to the clean water people, and the clean water people would not allow us to put in the reservoir. The Corps of Engineers said it would be just fine by them if we condemned the property right of ranchers and irrigating farmers along the way and took that water as a source of supply instead of using one that the city and the EPA safe drinking water people had agreed upon.

Mr. President, this is a total abuse of the power of the Government over the States. The Federal Government ought never to have such power as to make a

statement in the paper the night before the election that if the citizens of a community do not vote to tax themselves, the Government of the United States will penalize and punish them. And then having mediated the problem, tell them the mediation does not work, "Sorry, boys, we are out."

That is what this amendment seeks to address. It is not viewed by this Senator as a radical departure but only as a means of requiring accountability to the process of democracy, which so seldom now does exist.

Mr. President, I yield the floor.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, this is a sweeping amendment. It essentially provides that States can pick and choose which provisions under the Safe Drinking Water Act apply to them and which ones do not apply to them.

Essentially, it is a 20-year step backward because, in 1974, Congress, for the first time, passed the Safe Drinking Water Act. Prior to 1974, there was too much illness and too many deaths as a consequence of unsafe drinking water in too many communities across our country. Congress felt it would be wise to lay a basic foundation to address unsafe water systems in our country.

It is a bit complex. We are one Nation. We are 50 States. We have a Federal system. We had to find the right balance between national Federal provisions on one hand and State and local control on the other. It is not an easy matter.

It is not easy, either, because we travel in our country. Residents of North Dakota often visit Wyoming, often visit Rhode Island, Montana, and vice versa. We are a mobile society, a mobile country, a mobile people.

I think Americans assume that the water they drink in any State is safe and clean. It is an assumption we all make as Americans. And we are proud of that. There have been few exceptions. The cryptosporidium scare in Milwaukee is an example. Here in Washington, DC, tens of thousands, maybe hundreds of thousands, of people had to boil water to drink for several days because of a breakdown in the Washington water system.

But, essentially, Americans think they can drink the water wherever they visit, wherever they travel.

It is also important because many Americans take jobs in other States. We are becoming more transient and more mobile with each passing year. I think the rule of thumb now is a person can have maybe 10 or 12 different jobs in his or her lifetime.

We also are proud of our drinking water in juxtaposition with drinking water in other countries. It was not too many years ago that many Americans thought that we have safe drinking water, but it is those other folks in

other countries that may not. The question was, is it potable? Can you drink water in another country? Our water is safe, but maybe it is not safe in other countries.

Well, that is changing a bit now. Most countries, certainly developed countries, industrialized countries, have good, clean, safe drinking water.

We want to be sure to continue to have good, clean, safe drinking water in our country. It is very important for all Americans.

Congress, therefore, passed legislation in 1974. It has had kind of a bumpy ride. In 1986, Congress passed amendments to the Safe Drinking Water Act which overdid it; went too far. Frankly, that is why we are here today. We are trying to make the system work better than it would work under the 1986 amendments.

This legislation before us, I think substantially addresses the problems that were caused by the 1986 amendments. We dramatically reform the testing requirements and monitoring requirements that were otherwise imposed upon communities, particularly smaller communities. We also add much more flexibility to the technology requirements for those communities, particularly small communities, if a contaminant is found.

In addition to that, we give much, much more flexibility to States, where the States themselves can decide how to administer their drinking water program.

An example is the State monitoring plans. We make it very easy for States to develop their own State monitoring program which will achieve dramatic savings.

There are three States that come to mind that already participate in the State monitoring waiver program. They are Wisconsin, Massachusetts, and Michigan. In the State of Michigan, the monitoring costs are reduced to one-tenth what they otherwise would be if that State did not have a State waiver for its monitoring program.

We made it very clear in this bill. We are reducing a lot of redtape so that the other remaining States, remaining 47, can very easily develop their own State monitoring programs. That is important because each State is different.

In addition to that, localities within States are different. Some part of one State might have an industry that would make it advisable to monitor for certain contaminants which may not be found in another part of that State, which means that monitoring would not be required. There is dramatic flexibility here.

In addition, Mr. President, we are funding the remaining reformed mandates in this legislation—\$600 million the first year, \$1 billion in State revolving loan funds in each successive

year, over \$6 billion. So we are addressing the problem.

I might say, Wyoming is the only State in the Nation that has not taken over its drinking water program. Wyoming is the only State where EPA runs it.

Part of the solution, I submit, frankly, not only for Wyoming but for all States, is for the States to take over the drinking water programs themselves and then they can tailor their program to conditions that are very appropriate to the State.

Basically, I think it is clear on its face that this amendment is a gigantic, 20-year step backward; back to where we were before the 1974 Safe Drinking Water Act. It would essentially allow States to have veto power over any safe drinking water rule or regulation. I do not think that is wise policy because then we have 50 States with completely different policies. We will have no idea whether Americans traveling around the country, whether in this community or that community, the drinking water is safe or not. I do not think it is a good way to do business.

In order to address that balance between national legislation on the one hand and State and local control on the other, we, again, are dramatically reducing the requirements. We are adding many, many Federal dollars to help States comply. We are giving much, much more flexibility to States. In fact, I think the balance is a good balance between national control on the one hand and total State control on the other.

It is for those reasons that I strongly encourage the Senate not to agree to the amendment by the Senator from Wyoming. If this amendment were adopted, it would completely gut this bill. We would be back, as I said, to where we were 20 years ago.

I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island

Mr. CHAFEE. Mr. President, I will be very brief because the chairman of the committee has touched on most of the issues.

As I read this amendment, it would make the safe drinking water legislation a voluntary program, and yet each State would continue to receive the Federal funds. It is a win-win situation, I must say, for the States. They do not have to enforce it, but they still get the funds.

The current law, as was pointed out, provides that the States can currently take over the administration of the program.

For some reason, Wyoming has not chosen to do this. Wyoming and the District of Columbia are the only two entities in the United States that have chosen not to administer their own program. And so, undoubtedly, Wyoming does run into direct contact with

the EPA in connection with this program because that is the way they have chosen to do it. They may have perfectly good reasons, but it is unique that Wyoming has not chosen, as has North Dakota, Rhode Island, Montana, and all the other States in the Nation, to administer its own program.

I, again, would like to reiterate the point that the chairman made that drinking water can present very serious health risks. The EPA has a science advisory board. The science advisory board ranked drinking water among the four most serious environmental risks to health that we have in our country.

So it seems to me there is a Federal role in protecting drinking water for the very reasons that were pointed out—because of the mobility of our population, the transient nature that we have. And having one set of uniform standards across the country, it seems to me, is appropriate.

Are we going to ask every State to try to develop its own standards? Are we going to have 50 different sets? This is a tremendous burden to impose on the States.

I think this piece of legislation we have before us, as the Senator from Wyoming pointed out, goes a long way to take care of the particular problems of the small water supply systems. So, therefore, I reluctantly oppose the amendment by the Senator from Wyoming and hope we could vote on it fairly soon.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. WALLOP. Mr. President, the Senator from Rhode Island suggested this would be a burden on the States. Let me suggest the States have the option of embracing the Federal regulation in its entirety. That is not much of a burden. And they do that if and when they think it meets the needs of their people.

Is it not funny how we no longer trust local government? Is it not an astonishing statement to say the people you vote for in the States are not competent or trusted? The people whom you vote for in your counties are not competent or to be trusted? The people who run your cities are not competent to be trusted? Only Washington.

I will say to the Senator why Wyoming has not assumed primacy. Because Wyoming was required, as has every other State been required, to adopt in its entirety the Federal regulation. That is not a partnership, as I stated in my opening remarks. That is a mandate: Do it our way or we will do it our way. The only difference is that in Wyoming for us to do it their way would have required us hiring some, I think the figure was 20 or 30 new people, to service a population of half a million people.

Do it our way or we will do it our way, is what the partnership is today.

I am not asking, and I do not suspect there are going to be, a whole lot of different standards around the country. The Senator from Montana is talking about the problems of cryptosporidium in Milwaukee. That is my point exactly, I would say to the Senator. Thousands were ill, and many died as a result of this parasite. But the mayor of Milwaukee knew, more than anyone else, about what went wrong and how to solve it.

But guess what he was doing. He was spending money monitoring things mandated by the Federal Government for 25 new contaminants listed every 3 years on a totally arbitrary basis. I would say that what happened in Milwaukee, in Washington, DC, happened under the aegis of the EPA and under the aegis of the Safe Drinking Water Act. It was not solved by a Federal solution, it was created by the Federal solution.

I grant what the Senator says about prior to 1974. But there was no EPA capability to provide the kinds of information, the kinds of science and the technology base which I am suggesting is the appropriate Federal role: To provide the information, to provide people with knowledge of what constitutes risk and what does not, to provide science to give people counsel as to what constitutes good technologies and what does not.

There is this unbelievable assumption that local officials will ignore unsafe circumstances that are a threat to their community and that a local government official cannot feel as much pain about these threats as we in Washington. That is a very strange concept. "Only Washington, only the beltway, can provide sensitivity to health threats. Local government officials—do not trust them. They are not to be trusted. Washington knows and locals do not and States do not and counties do not."

I just say again the flexibility which is described in this bill is more than was in the 1986 act, but the flexibility that was provided in the 1986 act says, EPA says: You adopt in its entirety our way of doing things, you do our work, and we will only fine you if we think it is wrong.

I think the State of Wyoming quite wisely said to the EPA, if it is going to be your way, you do it. The confrontations that we had in Wyoming were not unique to Wyoming. They happened in other States which had their own programs and their programs were threatened to be taken away when the States protested that they needed a little bit of flexibility, they needed to do some things more cheaply. "Oh, no," says the EPA, and, "Oh, no," will say the EPA when this thing comes down the road in its current configuration.

Mr. President, the solution of Wyoming was to opt not to do something over which they had no say and just become the administrative flunky of an

agency in Washington. What other States have done is up to them. But my guess is, and from what I have heard, that other States have been as frustrated as has been Wyoming. Other States have had small communities threatened with fines that were more than their assessed valuation, and the States, on top of it, were threatened to be fined as well.

Is this a Government that was once conceived of as a Government of the people and for the people? Or is this Government now master of the people? And do we now owe it our obligation to serve it in quiet?

I think that is what the question is here, Mr. President. That is the meaning of my amendment and that is the spirit in which I offer it.

I yield the floor.

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

Mr. BAUCUS. Mr. President, I think the issue is fairly well defined. It is my strong view this amendment does gut the bill before us, sets us back 20 years. I urge the Senate not to agree to the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

Mr. WALLOP. 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 clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. WALLOP. Mr. President inasmuch as nobody has answered the roll-call yet, I ask I be recognized for 30 seconds not on this amendment; that is, to state to the managers I will withdraw amendment No. 1715.

The PRESIDING OFFICER. Without objection.

The amendment (No. 1715) was withdrawn.

The PRESIDING OFFICER. Does the Senator have anything further to add?

Mr. WALLOP. The Senator has nothing further to add. I am willing to have the rollcall proceed. Thank you.

The PRESIDING OFFICER. The clerk will continue to call the roll. The assistant legislative clerk resumed the call of the roll.

Mr. FORD. I announce that the Senator from North Dakota [Mr. CONRAD] and the Senator from Louisiana [Mr. JOHNSTON], are necessarily absent. I also announce that the Senator from Alabama [Mr. SHELBY] is absent because of illness.

Mr. SIMPSON. I announce that the Senator from Idaho [Mr. KEMPTHORNE] and the Senator from Delaware [Mr. ROTH] are necessarily absent.

The PRESIDING OFFICER [Mr. FEINGOLD]. Are there any other Sen-

ators in the Chamber who desire to vote?

The result was announced, yeas 28, nays 67, as follows:

[Rollcall Vote No. 121 Leg.]

YEAS—28

Bennett	Grassley	Nickles
Brown	Gregg	Pressler
Burns	Hatch	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Stevens
Craig	Lott	Thurmond
D'Amato	Mack	Wallop
Dole	McCain	Warner
Faircloth	McConnell	
Gramm	Murkowski	

NAYS—67

Akaka	Exon	Mathews
Baucus	Feingold	Metzenbaum
Biden	Feinstein	Mikulski
Bingaman	Ford	Mitchell
Bond	Glenn	Moseley-Braun
Boren	Gorton	Moynihan
Boxer	Graham	Murray
Bradley	Harkin	Nunn
Breaux	Hatfield	Packwood
Bryan	Heflin	Pell
Bumpers	Hollings	Pryor
Byrd	Inouye	Reid
Campbell	Jeffords	Riegle
Chafee	Kassebaum	Robb
Cohen	Kennedy	Rockefeller
Coverdell	Kerry	Sarbanes
Danforth	Kohl	Sasser
Daschle	Lautenberg	Simon
DeConcini	Leahy	Specter
Dodd	Levin	Wellstone
Domenici	Lieberman	Wofford
Dorgan	Lugar	
Durenberger		

NOT VOTING—5

Conrad	Kemphorne	Shelby
Johnston	Roth	

So, the amendment (No. 1721) was rejected.

Mr. CHAFEE. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 1733

Mr. CHAFEE. Mr. President, I believe the amendment numbered 1733 offered by the Senator from Washington is pending.

Mr. GORTON. Mr. President, the amendment I offer today has been substantially modified from the amendment I was to originally offer. The telephone calls your office may have received from your State national rural water affiliate are based upon concerns with my original amendment—not the amendment I will offer today.

My amendment would amend the Small Systems Technical Assistance Program provision in the Safe Drinking Water Act. The technical assistance provision was set up to allow for small water systems to receive technical assistance on compliance with the act. The account is reauthorized at \$10 million each year for fiscal years 1994-2000 within S. 2019. Traditionally EPA has awarded funds appropriated to this account to the National Rural Water Association, a national non-

profit organization. NRWA, in turn, provides money to each of its State affiliates which is used to provide technical assistance to small systems in the State. The majority of the States have a National Rural Water affiliate, however, I understand a few States share operations.

Washington State has a National Rural Water affiliate, however, the Washington Rural Water Association and National Rural Water are in the midst of a disagreement over accounting procedures. I want to make clear that the amendment I offer today is not intended in any way to impact the ongoing disagreement between National Rural Water and its Washington State affiliate. WRWA and NRWA need to work out this dispute, and I encourage both to work to do just that. Nonetheless, I want to assure that Federal funds from the technical assistance account continue to make it to Washington State—and all other States in an equitable manner. Simply put Washington State is entitled to its fair share of Federal funds from this account.

My amendment does not seek to change the way in which NRWA and its State affiliates do business. My amendment only seeks to assure that funds are being distributed on an equitable basis, and that NRWA consult with a State on technical assistance issues. Specifically my amendment does two things:

First, it requires the Administrator of the EPA to assure that funds awarded to National Rural Water, which NRWA in turn provides to its State operations, to deliver technical assistance, are distributed among the States in an equitable manner.

In addition, it requires that NRWA consult with the State agency with primary enforcement responsibility in an effort to provide even better technical assistance activities in the State.

I would like to expand on the first point. I would like to define equitable as used in this amendment. The Administrator, under my amendment, must assure that the nonprofit organization distributes technical assistance funds equally amongst the States.

Furthermore, my amendment requires National Rural Water to consult with the States on NRWA-sponsored technical assistance activities in a given State. This is an extremely important provision, given that S. 2019, as amended, gives States increased flexibility in dealing with small systems. Since States will be required to establish their own monitoring program, under S. 2019, it is vital that folks providing technical assistance to these small systems have the benefit of consultation with the State. In addition the new operator certification program established under S. 2019 makes the consultation between NRWA and a State very important for proper compliance with the Act.

In addition I would like to clarify that my amendment is directed toward funding authorized under the technical assistance for small systems account which is used for providing technical assistance for Safe Drinking Water Act purposes. My amendment should not be misinterpreted to be directed at programs—like the Rural Community Action Program [RCAP]—but rather solely at funds provided for Safe Drinking Water Act technical assistance purposes.

I would like to thank the committee and Senator KERREY's office for their help in working out the problems with the originally drafted amendment.

I thank the committee for accepting my amendment.

Mr. President, I would like to thank the managers of the bill for accepting my amendment which seeks to ensure that funds from the technical assistance for small systems section of the Safe Drinking Water Act are distributed equitably among the states.

Mr. CHAFEE. Will the Senator yield? Mr. GORTON. The Senator will.

Mr. CHAFEE. It would be helpful, in the opinion of this Senator, if the Senator from Washington would clarify the definition of "equitable" as used within his amendment.

Mr. GORTON. The Senator would be happy to clarify the intent for the Senator from Rhode Island. The amendment directs the Administrator to assure that the nonprofit organization provide technical assistance in an "equitable" manner. Equitable should be interpreted to direct the Administrator to ensure that funding from this program is equally distributed amongst the States.

Mr. BAUCUS. Will the Senator yield for another question?

Mr. GORTON. The Senator would be happy to yield.

Mr. BAUCUS. Does the Senator's amendment address only those funds which are authorized in the technical assistance account to provide technical assistance for drinking water systems?

Mr. GORTON. The Senator is correct. My amendment only addresses funding of the technical assistance program for drinking water systems.

Mr. BAUCUS. I thank the Senator.

Mr. CHAFEE. Mr. President, I believe we are ready for consideration of the amendment.

The PRESIDING OFFICER. If there is no debate, the question is on agreeing to the amendment.

Mr. BAUCUS. Mr. President, we have looked at this amendment, and I think it is a very equitable answer to a problem.

I urge its adoption.

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

The amendment (No. 1733) was agreed to.

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

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

AMENDMENT NO. 1735

Mr. BUMPERS. Mr. President, I call up my amendment.

The PRESIDING OFFICER. If the Senator wishes to ask for regular order with respect to his amendment, that would be appropriate.

Mr. BUMPERS. I ask for regular order.

The PRESIDING OFFICER. The question is on agreeing to amendment number 1735.

Mr. BAUCUS. Mr. President, I ask the Senator from Arkansas if we might suspend so that we can take up the amendment of the Senator from Ohio. I think it has been cleared all the way around. It should not take very long.

Mr. BUMPERS. Mr. President, I yield the floor with the understanding that my amendment would be the first in order after the amendment of the Senator from Ohio is disposed of.

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

The Senator from Ohio.

AMENDMENT NO. 1731

Mr. GLENN. Mr. President, I call up my amendment 1731. It has been cleared on both sides. It is an amendment which passed the Senate by a vote of 79 to 15 before, the Department of Environmental Protection Act. I ask for a vote.

Mr. President, I rise to offer an amendment to elevate EPA to Cabinet-level status.

This amendment passed the Senate just over 1 year ago as a free-standing bill—S. 171, the Department of Environmental Protection Act. That legislation passed the Senate by a vote of 79 to 15. Unfortunately, the House has failed to pass a counterpart bill, so we have not been able to go to conference. My hope is that by attaching this amendment to Safe Drinking Water Act reauthorization, we will be able to conference a bill and enact it this year.

I would note that this amendment incorporates S. 171 as passed and amended, so it includes all amendments, except one, that were offered and agreed to last year—amendments from Members from both sides of the aisle. The only difference between this amendment and S. 171 as passed is that I have dropped Section 123—the Johnston risk assessment provision. I have dropped this provision because a Johnston-Baucus compromise on risk assessment has already been debated and adopted as a separate amendment to Safe Drinking Water Act reauthorization.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment of the Senator from Ohio.

The amendment (No. 1731) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. GLENN. I thank my distinguished colleague from Arkansas very much.

Mr. BUMPERS. Mr. President, I see the Senator from Kansas on the floor. I wonder if we could enter into a time agreement on this amendment.

Mr. DOLE. I am certainly willing to. I would like to have the vote tomorrow morning, if that is satisfactory with the majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BUMPERS. 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. 1735 TO AMENDMENT NO. 1729

Mr. BUMPERS. Mr. President, what is the pending question?

The PRESIDING OFFICER. The pending question is amendment No. 1735 offered by the Senator from Arkansas.

Mr. BUMPERS. Mr. President, I will be as brief as I can.

What the Senator from Kansas has done under his amendment is to say that any Federal policy, regulation, or proposed law that could diminish or have the effect of not only taking someone's property but diminishing the value of their property would require an agency analysis.

I will give you a classic case in point. This is my substitute amendment to the Dole amendment. Today, if the Secretary of Agriculture were to propose to the President of the United States that he limit durum wheat imports from Canada into the United States, under my amendment that would not constitute a taking of anybody's property nor would it constitute a diminution in the value of anybody's property, and, therefore, the Department of Agriculture would not do, essentially, an impact analysis.

Today, the Department of Agriculture does an analysis if it is likely to lead to a taking. That is essentially the difference in mine and Senator DOLE's amendments. He says the Department of Agriculture must do an analysis if it diminishes anybody's property value.

Let us assume that I am a pasta manufacturer, that I make pasta. Let

us assume, further, that, by limiting durum wheat imports from Canada, durum wheat prices are going to go up and, therefore, the cost of my product is going to go up, and it could go up to the point that it diminishes the value of my pasta manufacturing facility, indeed to the point that I might lose my business. Under the Dole amendment, if it diminishes the value of my property by one penny—one penny—I have the right to demand that the Department of Agriculture do an impact analysis.

Mr. President, along with my staff, we did a study of all the possible scenarios we could think of. I want to applaud the Senator from Kansas for offering an amendment on an issue that is going to have to be dealt with. It is a very important issue. When we consider the clean water bill here, we are going to get back on this issue, I promise you, because if the Corps of Engineers says that your land is now wetlands and you were planning to build a home on it, obviously there has been a serious diminution in the value of your property, at least for the purposes for which you bought it. That would trigger an analysis under the Dole amendment.

As I said, under my amendment, which essentially codifies the existing law on it, the analysis would only be done if a Federal action was likely to lead to a taking—likely to lead to a taking.

Mr. President, I am not going to belabor this. I hope that every Senator, when they come onto the floor, will understand this. I think we are going to voice vote this, and we will not have a rollcall vote.

The other problem with the Dole amendment is that it does not exempt anybody. You could tie up emergency aid for the Midwest during the floods; you could tie up emergency aid for the Los Angeles earthquake for years if our efforts there to assist all of those people had the effect of diminishing the value of anybody's property, say in Los Angeles, by one penny. Nobody intends that.

We have always—even the Reagan order, I forget the number of it—the executive order of Ronald Reagan exempts law enforcement, exempts the military, exempts foreign policy issues and initiatives. The Dole amendment exempts nothing.

So, Mr. President, while I applaud the Senator from Kansas for legitimately bringing to this body an issue that is going to have to be dealt with, in my opinion it would bring Government to an absolute standstill in this country. I cannot overemphasize the staggering, unbelievable, effect it would have.

Having said all of that, Mr. President, we are not going to have an extended debate on this. I think the amendment is going to be accepted, so I will yield the floor.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. 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. 1735, AS MODIFIED

Mr. DOLE. Mr. President, I ask unanimous consent that I may modify the pending amendment, and I send a modification to the desk.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendment (No. 1735), as modified, reads as follows:

Strike all after the first section heading and insert the following:

(a) SHORT TITLE.—This section may be cited as the "Private Property Rights Act of 1994".

(b) FINDINGS.—The Congress finds that—  
 (1) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the Constitution by the Fifth Amendment and made applicable to the States by the Fourteenth Amendment; and  
 (2) Federal agencies should take into consideration the impact of Governmental actions on the use and ownership of private property.

(c) PURPOSE.—The Congress, recognizing the important role that the use and ownership of private property plays in ensuring the economic and social well being of the Nation, declares that the Federal Government should protect the health, safety, and welfare of the public and, in doing so, to the extent practicable, avoid takings of private property.

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

(1) the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and—

(A) includes the United States Postal Service; and

(B) does not include the General Accounting Office; and

(2) the term "taking of private property" means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

(e) PRIVATE PROPERTY TAKING IMPACT ANALYSIS.—

(1) IN GENERAL.—The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this section; and

(B) all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property, except that—

(i) this subparagraph shall not apply to—

(I) an action in which the power of eminent domain is formally exercised;

(II) an action taken—

(aa) with respect to property held in trust by the United States; or

(bb) in preparation for, or in connection with, treaty negotiations with foreign nations;

(III) a law enforcement action, including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(IV) a study or similar effort or planning activity;

(V) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(VI) the placement of a military facility or a military activity involving the use of solely Federal property; and

(VII) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(ii) in a case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation pursuant to section 553(b)(B) of title 5, United States Code, the taking impact analysis may be completed after the emergency action is carried out or the regulation is published.

(2) CONTENT OF ANALYSIS.—A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(3) SUBMISSION TO OMB.—Each agency shall provide an analysis required by this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with the proposed regulation.

(f) GUIDANCE AND REPORTING REQUIREMENTS.—

(1) GUIDANCE.—The Attorney General shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) REPORTING.—Not later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall provide a report to the Director of the Office of Management and Budget and the Attorney General identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation

pursuant to the Just Compensation Clause of the Fifth Amendment to the Constitution. The Director of the Office of Management and Budget and the Attorney General shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies made pursuant to this paragraph.

(f) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

(1) limit any right or remedy, or bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of the value of any property for purposes of an appraisal for the acquisition of property, or for the determination of damages.

(g) STATUTE OF LIMITATIONS.—No action may be filed in a court of the United States to enforce the provisions of this section on or after the date occurring 6 years after the date of the submission of the certification of the applicable private property taking impact analysis with the Attorney General.

Mr. DOLE. Mr. President, I might just say a word before we adopt the amendment.

I thank the Senator from Arkansas. I think, as he properly indicated, this is a matter that is going to be before the Senate. We have not had the last word on it, but I think we have made some improvements.

I thank not only the Senator from Arkansas, but the managers of the bill and others on both sides who have an interest in this particular legislation.

I think we should go ahead and act on the amendment, and then I would like to make a further statement before we go out.

The PRESIDING OFFICER. For clarification, the modification by the Republican leader is to the second degree amendment.

Mr. CHAFEE. Mr. President, I am not in favor of either of these amendments.

Mr. MURKOWSKI. Mr. President, I rise today to lend the strongest possible support to the amendment offered by the minority leader, Senator DOLE.

There is no quarreling with the clear words of the fifth amendment to the Constitution: "Nor shall private property be taken for public use without just compensation." The debate has been over precisely when a property has been taken, and thus when to provide just compensation.

It is one thing to recognize when the Federal Government takes a property by appropriation or physical possession. If what a Government policy, regulation, proposal, recommendation, or other agency action does is to restrict one's use of property, there is a real possibility of a taking by regulation. This, it is quite another thing to recognize when there has been a regulatory taking.

Since 1922 the courts have been struggling with the concept of regulatory taking. In the scattering of cases over the last 50 years, the standards for a regulatory taking have always been ad hoc.

Since the 1970's, one decision after another has come from the courts on this issue, creating a historic legal framework for the courts to decide future cases within. But what is missing is participation by the agencies in evaluating just when they have effected a taking, and how much it will cost.

The National Park Service of the United States is the envy of the world. It is widely emulated in other countries. What we don't talk about very much, and what we don't want the rest of the world to emulate is the way we deal with private property contained as inholdings within the parks.

Over the years we have encumbered millions of acres of private property within the designated units of the National Park Service.

The record is replete with anecdotal stories of the heavy handed actions taken by the Government as they constrain and control the otherwise lawful actions of the private property owners that have through no fault of their own become included within park service units.

This country is founded on the premise that private property rights are valuable, and should be respected. Yet what we have witnessed in the last few years is the tyranny of the Federal Government against the private property owner in the name of wetlands rules, Endangered Species Act regulations, and dozens of other Federal policies, proposals, recommendations, and other agency actions.

Over the past years thousands upon thousands of individuals—private property owners—have had their rights diminished by well-intentioned bureaucrats who have had no idea of what wrath their rules have wrought. Nor did they have any concept, idea, or thought about the cost of the unfunded liability the private property would need to bear.

It is time for a little truth in advertising Mr. President—people need to know how our laws and subsequent rules and regulations are going to impact their basic constitutional rights.

Under this amendment, the Federal Government would be required to analyze the impact of their programs on private property rights. Then, Mr. President, we will have a measure of the effect of agency actions on the use and value of private property. The people will know, and we will have a clear statement of whether the owner is entitled to compensation.

I urge my colleagues to support the amendment.

Mr. MCCONNELL. Mr. President, I would like to commend Senator DOLE and Senator HEFLIN for offering this amendment to the Safe Drinking Water Act Amendments of 1994. I rise in support of this amendment.

It is time for Federal regulators to obey the Bill of Rights. Under the fifth

amendment, the rights of property owners are protected from the Federal Government. Unfortunately, those who have sworn to uphold our Constitution are not always as vigilant as they should be.

As I understand this amendment, Federal agencies are required to conduct a taking impact assessment prior to promulgating any agency policy, regulation or guideline, or when recommending legislative proposals to Congress. The assessment must consider the effect of the agency action, the cost of the action to the Federal Government, and the reduction in value to private property owners. The agency would also be required to consider alternatives to taking private property.

The legality of the Government disallowing certain legitimate and productive uses of land, yet still requiring taxes to be paid on it, could certainly be questioned. The amendment before us today will require agencies to consider alternatives to taking private property, and to take into consideration what their actions may have on the use and ownership of private property.

Senator BUMPERS' substitute does not provide for the opportunity for public availability or review nor does it provide for judicial review of agency analysis.

Mr. President, I urge my colleagues to oppose the Bumpers amendment and support the underlying Dole amendment.

Mr. LIEBERMAN. Mr. President, I cannot support the so-called takings amendment offered by Senator DOLE. If all it did was make sure that agencies proposing new regulations ascertained in advance whether those regulations constituted a taking of private property for public use, and published that analysis in the Federal Register, I would not oppose it. But this amendment is not just about protecting the public purse against potential takings claims. It goes far beyond any reasonable construction of the fifth amendment's takings clause and attempts to erect a system in which maintaining property values—not just avoiding takings—is paramount to all other public interests, including health and safety. At a time when we are all trying to streamline Government, to make Government more productive and more efficient and more focused on results, it would create boatloads of new paperwork, much of which is unnecessary and excessive. This amendment is neither good law, good policy nor good government.

Mr. President, private property rights are an important foundation of our constitutional and economic system. The right of American citizens to be protected from having their property taken by the Government without just compensation is central to our

governmental system. But one of the hallmarks of our system of government is that all rights are balanced and none are absolute. Even the freedom to speak, which is the cornerstone of democracy, has its limits. I respectfully suggest that this amendment takes the tried and true and much revered, much appreciated, much valued, much protected, right of private property and would use that right as a theory to obliterate a host of other rights we have such as the right to due process, the right to be safe, healthy, and free, and the right to be protected by a government of laws on which we must depend because we cannot always protect ourselves.

Let's look at exactly what this bill would require. Before an agency could issue any policy, regulation, proposal, recommendation—including any recommendation or report on proposal for legislation—or take any related agency action which could conceivably result in a taking or a diminution of use or value of private property, the agency would have to certify to the Attorney General that the agency has conducted a so-called private property taking impact analysis. The so-called takings impact analysis must contain a statement of the specific purpose of the proposed action, an assessment of whether a taking would occur, an evaluation of the effect of the action on the use or value of private property, and possible alternatives that would lessen the adverse effects on the use or value of private property. These analyses would not only be required for new actions, but would have to be repeated every 5 years.

So what's wrong with this amendment? Let's start at the top. First, it applies to just about every action an agency could take, regardless of whether it was simply floating a trial proposal for comment or was actually on the doorstep of promulgating final regulations. Does this mean that an agency cannot even put out an advance notice of proposed rulemaking, the most preliminary step in formulating new rules, without engaging in this lengthy and complicated analysis? Can the Administrator of the Environmental Protection Agency give a speech saying that the EPA is considering whether a new approach or policy might be warranted without having completed the taking impact analysis? The amendment would even require an agency to complete such an analysis before it could report on proposed legislation. It sounds to me like a takings impact analysis would have to be completed before an agency could give testimony before a congressional committee.

Second, the so-called takings impact analysis is not even limited to an evaluation of whether a taking would occur. Instead, this amendment reaches far beyond any constitutional definition of a taking and requires an

assessment of the extent to which any contemplated action would result in any diminution of property values. While the effect on property values certainly should be considered as part of any overall assessment of the costs and benefits of a regulatory action, assessment of the effect on property values for actions that are not takings is simply not a proper part of a taking impact analysis.

Third, this amendment is truly unprecedented in scope. Even the Takings Executive order issued by President Reagan did not go this far. A taking is a concept defined by the courts interpreting the fifth amendment. It has never been interpreted to include a diminution in property value. Indeed, in its most recent takings decision, the Supreme Court concluded that a regulatory action might categorically be a taking only if the owner was denied all economically viable uses of the property.

Fourth, what is meant by a diminution in value? Many actions can diminish the value or use of one property interest but increase the value or use of others. For example, if night airport landings are restricted at National Airport, this diminishes the use or value of the airport, but it increases the value of property in the neighborhood of the airport. Similarly, if the FAA were to issue a regulation prohibiting high-rise buildings near the flight path of an airport, this would increase or maintain usability of the airport, but diminish the use or value of affected properties. This amendment appears to ask for an evaluation of the effect on each property, not just property interests taken as a whole.

Fifth, this is largely a duplicative paperwork exercise. Under the President's Regulatory Management Executive order, executive branch agencies are required to assess all costs and benefits of available regulatory alternatives. The diminution of property values is clearly a cost that would be required to be considered. For any significant regulatory action, one with an impact of over \$100 million annually or with a material effect on the economy, a sector of the economy, productivity, competition, or jobs, the agency's assessment of the costs must be submitted to the Office of Management and Budget for review. With respect to these proposed regulations, the analysis required by this amendment is duplicative.

Sixth, this amendment even appears to prevent emergency regulations, such as might be imposed if we found ourselves suddenly and totally at war, from being issued without a takings impact analysis.

Mr. President, it is important to remember that the takings clause of the fifth amendment is self-executing. Individuals who believe the Government has taken their property without just

compensation have the right to seek restitution in the U.S. Claims Court. The courts have defined, through the case law, what constitutes a taking of private property for public use. This bill does not change any of that—nor should it. The courts are much better situated than we are to examine the circumstances surrounding each alleged taking to determine whether one has actually occurred. Indeed, the fact that some courts have found that some Government regulations may result in a taking shows that the court system is working.

What this amendment does is simply impose a huge and unworkable paperwork burden on the Federal Government. The analysis this amendment calls for is completely out of proportion to the laudable goal of identifying potential takings in advance, so that policymakers can weigh those costs in their decisions. This amendment does not streamline government nor make it more efficient. It is not consistent with any notion of reinventing government.

The proponents of the amendment have not made the case for the aggressive legislative intervention that this amendment contemplates. It is important to remember what is at stake here. This amendment would dramatically limit our Government's capacity to protect us, our health, and our safety.

For these reasons, Mr. President, I will oppose the Dole amendment. I urge my colleagues to do likewise.

Mr. LEAHY. Mr. President, I would like to ask the Chairman a few questions about the Bumpers substitute to the Dole amendment.

The Constitution, in the fifth amendment, now requires that if the Government takes property, compensation must be provided. Does this amendment change the constitutional understanding of the concept of takings?

Mr. BAUCUS. This substitute does not change the present constitutional provision on takings nor expand the concept by legislative action.

Mr. LEAHY. Beyond the obligation which exists to respect private property and to avoid takings in regulatory action where possible, does this legislation require that the agency head take any action beyond the analyses and reporting requirements in subsections (e) and (f)(2)?

Mr. BAUCUS. No, it does not.

Mr. CHAFEE. I rise to express my views on the second degree amendment offered by Senator BUMPERS. I have some significant concerns that this second degree, like the Dole amendment, will result in paralysis by analysis. While the Bumpers second degree is a substantial improvement over the Dole amendment, I question whether this type of amendment is necessary at all.

First, let me express my general concerns about this entire approach. While

the scope of the Bumpers amendment is much more reasonable than the original amendment, it still would require that a fairly extensive takings analysis be completed whenever any Federal action was likely to result in a taking. This would be a costly requirement and divert significant Federal resources.

I question whether this amendment is necessary when the fifth amendment fully protects property rights. It is proper for the courts, not the agencies, to judge when a taking has occurred.

I am also concerned that the resources for performing these takings analyses will come from the scarce resources available to protect the public health, environment and welfare. The second degree would improve this situation by including reasonable exceptions and by streamlining the required analysis, however, it will cost money that we simply do not have.

On the plus side, the second degree amendment would not require, as in the Dole amendment, agencies submit a certification regarding their takings analyses to the Attorney General. This requirement provides little protection for property owners while raising the specter of unnecessary bureaucratic delays for important Federal regulations. So, striking that requirement is an improvement.

In addition, the second degree amendment exempts a limited list of Federal actions relating to foreign policy, military matters, law enforcement and study and planning activities. These actions would rarely, if ever, effect a taking under the fifth amendment. Further, if a number of these activities were delayed due to the requirement for a takings impact assessment, United States interests would be seriously compromised. So again, adding these exemptions is an improvement.

Consistent with current Supreme Court takings jurisprudence and common sense, the second degree would require a takings impact assessment only for those actions likely to affect a taking, and not for actions which may in some way diminish the use or value of property. This will avoid redefining constitutional takings law, and reinforce the primary purpose of the legislation—to enhance constitutional protection of private property rights. This change will also ensure that the Government can continue to fulfill its other responsibilities to protect the public health, safety and environment.

Unlike the Dole amendment, the second degree would not make these internal agency analyses public. Instead, agencies would be required to provide the analyses to the Office of Management and Budget. Making these documents public would encourage takings litigation at the expense of the taxpayer. The second degree amendment would avoid the prospect of providing a

bonanza for takings lawyers rather than protecting property rights.

Mr. President, I continue to believe that the fifth amendment is the best protection a property owner could have. I know that Senator DOLE and others are concerned that Federal agencies do not always heed the words of the Constitution.

But, when that happens, when agency action crosses the line of acceptable Government regulation and results in a taking of private property, the supreme law of the land already requires compensation. We do not need new legislation to improve upon the Constitution. For that reason, Mr. President, I am opposed to the Bumpers amendment.

We are going to have a voice vote and I would like to have it noted that I voted no.

The PRESIDING OFFICER. The record will so indicate.

Is there further debate on the second degree amendment. If not, the question is on agreeing to the amendment.

The amendment (No. 1735), as modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. DOLE. Could I speak on the amendment now? As I understand, you may want to get the other agreement first.

I yield the floor temporarily.

Mr. BAUCUS. Mr. President I ask unanimous consent that the vote on final passage of S. 2019 occur without any intervening action or debate at 10:30 a.m. tomorrow morning.

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

Mr. BAUCUS. Mr. President, I also ask for the yeas and nays on final passage.

The PRESIDING OFFICER. Is there a sufficient second. There appears to be a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Does the Senator from Arkansas want to speak further on the amendment, as modified?

Mr. BUMPERS. No.

Mr. DOLE. I want to say a few words and then I would ask that the Senator from Texas, Senator GRAMM, be allowed to speak for 10 minutes.

Is there objection to that?

Mr. BAUCUS. Does the Senator mean now?

Mr. DOLE. I am going to speak now. Mr. BAUCUS. For about how long?

Mr. DOLE. I think about 5 minutes. Then the Senator from Texas would like to speak for about 5 or 10 minutes.

Mr. BAUCUS. Before we get to that, I would just like to thank Senators who have been involved and worked very hard to pass this bill.

Senator CHAFEE, who has worked long and hard, through thick and thin; Senators HATFIELD and KERREY have done a tremendous job in offering amendments to help put this bill together; Senator WARNER, who helped in broadening support for source water protection, along with Senator CONRAD; and Senator JOHNSTON, for the cooperative way he approached our discussions to draft a better amendment on risk.

Tremendous thanks to Administrator Browner, Bob Perciasepe, and Jim Elder for their helpful assistance at EPA. And Martha Bennett and Doug Pahl of Senator HATFIELD's office for the long, hard, many, many hours. The same for Diane Hill, a fellow Montanan, I might add, who works for Senator KERREY, from Nebraska. Ann Loomis, with Senator WARNER; Jerry Reynoldson, with Senator REID; Barbara Cairns, with Senator LIEBERMAN.

We think we work long hours, Mr. President, but the names of the people I have just mentioned I think have worked even longer hours than we have.

From our committee staff, Jimmie Powell, Steve Shimberg, and Lori Williams. In addition, Jeff Peterson; Jo-Ellen Darcy; Bob Irvin; John Reeder, on loan from EPA; Karen Iardo, Mike Evans, Tom Sliter, and Peter Scher. I give my heartfelt thanks to all of them.

I just thank them for their hard work.

Mr. President, also in behalf of the majority leader, I will announce there will be no more votes tonight.

I thank the Senator for yielding.

Mr. DOLE. Mr. President, time and again, I have heard from the people all across America that Congress must do more to stop the tide of infringement on private property rights. I believe we have all heard this message. So, this amendment is a small first step toward ensuring that government mandates and government bureaucrats do not continue to run over individual citizens and individual rights.

It is time for Congress to send a very clear signal to the people affected by this and other legislation. The message is that, unless absolutely necessary, the Federal Government should not be in the business of the whole or partial taking of private property.

This amendment would send that message. The amendment is very simple. It would require Federal agencies to conduct a takings impact assessment when promulgating any agency policy, regulation or guideline, or recommending legislative proposals to Congress. This bill does not stop legitimate regulatory processes, and it only applies to actions which could result in a taking.

The assessment required by this amendment must consider the effect of the agency action, the cost of the action to the Federal Government, and

must explore alternatives to taking private property.

The rights of property owners are supposed to be protected from the Federal Government under the 5th amendment and from State Governments by the 14th amendment. Unfortunately, those who have sworn to uphold our Constitution are not always as vigilant as they need to be. Let's face it, whether we like it or not, there are multiple takings each year by the Federal Government.

I have several examples of court cases against the Federal Government, where a taking of private property was involved. I would like to cite just a few of these cases.

Whitney Benefits, Inc., and Peter Kiewit Sons' versus the United States. The plaintiffs purchased a large tract of minable coal. The Government later enacted the Surface Mining Control and Reclamation Act. The property owner was prevented, by the application of this law to his property, to realize the benefit of his investment. The Court of Federal Claims found that this was a taking under the fifth amendment of the U.S. Constitution, and awarded the plaintiff the sum of over \$62 million, plus interest compounded annually. Adding in interest, the total amount owed by the United States is \$300 million. 1902 Atlantic, Ltd. versus United States in 1981, the plaintiff applied for a permit to fill a hole in the ground that had been dug to provide dirt for a nearby overpass. Over the years, the hole had accumulated water. Moreover, the hole had become a local dumping site for trash and refuse. One child had been killed as a result of playing in the hole. The owners wanted to fill the hole, and build an industrial park. Neighbors were ecstatic because it would clean up an eyesore, cure a safety hazard, and increase the tax base. The Government refused the wetlands permit, and only after 14 years of litigation finally agreed to compensate the owner for a taking.

It is also important to note that a taking can occur even though title to the property remains with the original owner and the Government has only placed restrictions on its use. Fortunately, courts have recognized that these partial takings are subject to just compensation.

Some will question why this amendment is necessary if the courts are doing such a good job. Unfortunately, challenging the Federal Government in court is out of the financial reach of most Americans. The Government, backed by the seemingly limitless resources of the U.S. Justice Department, usually outlasts by outspending, while the poor citizen pays for the lawyers for both sides through fees and taxes.

This is nothing more than a companion requirement that major Government undertakings be accompanied by

a takings impact statement. These efforts are complimentary, not mutually exclusive.

So, let us be clear. A vote for this amendment is a vote for taking the first step toward putting the people back in charge of their land and back in the loop of what we are doing as their elected representatives. I can assure my colleagues that there is great interest in this matter by your constituents and by a large group of organizations who will be letting your constituents know exactly where we all stand on this matter.

This is a good-Government amendment. It brings Government into the sunshine. If you support the National Environmental Policy Act, if you support the Freedom of Information Act, if you support the Administrative Procedures Act, then you should support the Private Property Rights Act of 1994.

Mr. President, I ask my colleagues to ask their small business men and women, their farmers, their ranchers, those who believe in the private property rights contained in our Constitution, what they think about this amendment. When they do, I am certain they will agree that we should adopt this amendment.

Mr. MURKOWSKI. The Senators from Alaska would like to clarify the application in Alaska of several provisions of the Baucus-Chafee-Hatfield-Kerrey amendment that was adopted on Thursday, May 12, 1994.

The bill requires the principal operator of each community and noncommunity water system serving nontransient populations and any laboratory conducting tests to be certified as proficient. The Kerrey-Hatfield amendment also requires the Administrator to publish guidelines developed in consultation with the States describing minimum standards for certification of the proficiency of operators and other appropriate personnel.

It is important that these guidelines take into account the availability of certified operators in Alaska. Systems that cannot afford to train staff or hire certified operators should be able to meet requirements by having a part-time certified operator through the circuit rider program. In the view of the chairman, would a circuit rider operation and maintenance program be a viable substitute for providing a certified operator in each village?

Mr. BAUCUS. In my view, it would. In fact, the circuit rider program is a viable option for small, rural communities.

Mr. MURKOWSKI. That is fortunate because only 6 percent—14 of Alaska's 225 plus villages have an operator who has received a level of training and certification beyond that of an operator-in-training [OIT]. Obtaining an OIT certificate requires either 3 months of experience or successfully completing a

4-day course and passing a certification exam. It is my understanding that this is a very basic entry level certification. The combination of the circuit rider program and the operator-in-training program should be sufficient for Alaska to meet any guidelines for certification.

Mr. BAUCUS. Yes; we recognize that the State of Alaska, like other rural States, has numerous small systems and that it would be impractical to expect each system to have a certified operator.

Mr. STEVENS. The Chairman is correct. Statistics demonstrate that Alaska is a small system State—95 percent of Alaska's community systems serve less than 3,300 people, 93 percent serve less than 1,000 people, and 84 percent serve less than 500 people.

As a small system State, Alaska is also in need of special consideration under the system viability provisions of the bill. The junior Senator from Alaska and I considered offering an amendment clarifying the need for special consideration for the immense viability challenges due to climate, remoteness, and inadequate drinking water supplies in some parts of our State. However, in discussions we were assured that the Administrator, when issuing guidance on viability, would address Alaska's viability challenges.

Many small systems in Alaska lack the technical, financial, and managerial capability to consistently comply with regulations. Different approaches may be needed for these small systems.

Alaska's remote maintenance worker program provides skilled assistance to small communities and conduct 1-on-1 training for local operators. Each remote maintenance worker position provides services to 10 to 15 villages. There have been no system failures since 1989 in areas served by remote maintenance workers. This program is supplemented by a remote systems monitoring program. This allows systems of several villages to be monitored in one central location via telephone.

Mr. CHAFEE. I thank the Senator from Alaska for informing the Senate of the special rural programs for water systems in Alaska. The remote maintenance worker program and remote systems monitoring program sound like the right approach to ensuring viable of rural water systems. The committee has considered utilization of such programs. We intended that such programs will enable small, rural communities like Alaska villages to attain viability.

Mr. MURKOWSKI. I might add that many Alaska rural communities do not currently have governments that can afford to maintain viable systems. Although these systems would be considered by most as nonviable—unable to financially meet EPA monitoring and treatment requirements—water from these systems provides a higher degree

of safe water than the impractical or impossible alternatives of individual water sources or gathering water from surface ponds, rivers, or snow melt.

Mr. STEVENS. I agree with the statements of my colleague from Alaska. The State of Alaska should be given latitude to develop its own criteria for determining system viability. The traditional concept of system viability among the South 48 States may not fit the unique circumstances in Alaska. Physical consolidation of many of Alaska's systems, is impossible in many areas due to isolated, remote locations, cultural differences, and harsh environmental factors.

Mr. BAUCUS. We are well aware of the deplorable problems that the rural communities of Alaska face. It is the intention of the managers of the bill that these conditions be considered in the Administrator's guidance under the viability provisions of the bill and the viability considerations for the State of Alaska generally. As the Senator indicated, however, viability does not always require physical consolidation. There are innovative programs, such as those being developed in Alaska, which can help a system become viable without physical consolidation.

Mr. CHAFEE. Yes; it is important that we recognize that Alaska is dealing with a unique set of circumstances and that we can not expect third world sanitation conditions in some villages to change overnight.

Mr. MCCAIN. Mr. President, I would like to ask the chairman a question regarding metering for water conservation purposes.

Mr. BAUCUS. I would be pleased to respond to the Senator.

Mr. MCCAIN. Because of arid conditions in the desert southwest, we must be careful how our water resources are utilized. State and local governments have responsibly passed laws and ordinances which promote water conservation. The Arizona State Legislature recently passed a law which encourages mobile home parks to submeter and charge for water use to encourage conservation.

Is it the intent of the committee to impose another level of regulatory oversight in this case?

Mr. BAUCUS. No, Mr. President, it is not the intention of this Senator or the committee to regulate these systems differently from nonsubmetered systems and inhibit the ability of the States to encourage water conservation. The use of a water meter for the purpose of establishing charges at a trailer or at any point in a distribution system does not create a separate water system.

Mr. MCCAIN. Mr. President, I thank the chairman for his courtesy to my inquiry.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The question is on the amendment.

The underlying first-degree amendment is the question.

Mr. BAUCUS. Madam President, I urge the Senate adopt the underlying amendment.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BAUCUS. Might I make a short statement?

Mr. GRAMM. I yield the floor.

Mr. BAUCUS. I thank the Senator from Texas.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Madam President, tomorrow we are going to vote for final passage on this bill. I have already said plenty about the merits and I have said plenty about the intricacies of the Safe Drinking Water Act, about variances, about MCLG's, disinfection byproducts, small system BAT, et cetera. I will spare my colleagues and staff a recap about that. But I would like to make a few basic simple points.

We are, I hope, about to pass the new Safe Drinking Water Act. That is important. The bill will protect public health so every American can turn on the faucet and pour a glass of water without worrying about getting sick. The bill also reduces cost to public water systems, especially small public water systems, struggling to provide important service to the neighbors.

But, in addition to passing the new Safe Drinking Water Act, we are also about to do something even more important. We are about to demonstrate that we in this Chamber can work together constructively to improve our environmental laws. Maybe this does not sound like a big deal, but I think it is.

For years now, the country and this Chamber has been paralyzed by gridlock over environmental policy. For years now, there has been in essence a religious war between the business community and environmental community. One side argues that environmental protection undermines the economy. The other side argues that economic growth destroys the environment. It has been characterized as a zero sum game—gridlock.

This attitude has spread to some of our other debate here on the floor. It seemed like you are either for the environment or for the economy, for the environment or for private property, for the environment or for sound science-based analysis.

This bill is a striking break from that pattern. It is bipartisan, reported by the committee by a vote of 17 to zero. On the Senate floor we worked with a coalition led by Senators KERRY and HATFIELD. Through it all, we worked to achieve common objectives: To promote the environment and reduce burdensome regulations on those who operate drinking water systems.

After all, the American people want both. They want to protect their water and want to reduce burdensome regulations.

Madam President, I think they also want us to take a practical, common-sense approach to our environmental problems. That is what this bill does.

Madam President, we have further tough issues ahead of us: the Clean Water Act, Superfund, Endangered Species Act. But this bill, I think, can serve as a model. We do not have to pit the environment against the economy. Rather, if we work together, listen to legitimate arguments on both sides and take creative approaches, work very hard, long hours, roll up our sleeves, we can write environmental laws that protect the environment and promote economic growth.

I look forward to working with all my colleagues to achieve this goal as we take up the Clean Water Act, Superfund, Endangered Species Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Madam President, I want to speak on the amendment offered by Senator DOLE on my behalf and on behalf of other cosponsors.

Mr. GRAMM. Madam President, the fifth amendment of the Constitution concludes with the following words: "Nor shall private property be taken for public use without just compensation."

The Founding Fathers understood that private property was the foundation of liberty. The Founding Fathers understood that freedom of speech was equally as important as economic security and that both deserved constitutional protection.

So when the Founders wrote the Constitution, they meticulously protected not just our political rights, but our economic rights. Nowhere is that clearer than the protection for private property. I think, Madam President, that the founders would be stunned at the assault on private property which has occurred in America since the 1930's. In fact, it seems to me that the courts believe that any two consenting adults can engage in any activity with constitutional protection other than owning and possessing private property, engaging in commerce, and creating jobs. When people engage in those activities, they stand naked before the growing Federal assault on their constitutionally protected private property rights. I do not believe the Founding Fathers intended that to be so.

If you own 100 acres of land today and the local government comes in and condemns 10 acres to build a road, no one disputes the fact that they have to pay you for those 10 acres. However, if you own 100 acres and the Government comes in and says you have the red-cockaded woodpecker nesting in one corner of your land where you planted

pine trees to harvest, to earn money for you, but now the Federal Government decided that since this endangers the nesting habitat of the red-cockaded woodpecker, you cannot cut these 10 acres.

Madam President, currently, there is a dispute at all levels in the courts and before the Supreme Court as to whether that is a taking of private property or not. Unfortunately very few Americans have the resources to fight the Federal Government in Federal court. As a result, takings are occurring all over the country in the name of regulatory takings, and it does not appear that private property is protected.

I believe that James Madison would have no doubt, were he here today, that when the Founding Fathers wrote the Constitution they intended to protect property, and they intended to require that people are provided compensation when their property is taken, whether they lose it physically or whether they simply lose its value in use or its value in exchange.

The amendment that has been offered by Senator DOLE, by me, and by others tries to force the Federal bureaucracy to account for takings, to respect private property, and to undertake a study of the impact that Federal actions have on private property.

What we have seen today is the adoption of a compromise. I am not sure the compromise goes far enough, but it is a step in the right direction. I want to assure my colleagues that this issue is not going to go away; that before this Congress ends, at least this first step is going to be taken and is going to become the law of the land.

But I also want to say, in conclusion, that I do not think this first step is far enough. I want to do with private property what America did in the 1950's and the 1960's with civil rights. What we did with civil rights is write into law what we meant by the 14th amendment, and we guaranteed that 14th amendment rights were going to be protected. I believe that the protection provided by the Constitution in regard to private property rights is as important as the protection provided for civil rights. I support both.

I want to ultimately write into law that a regulatory taking that diminishes the value of land in use or in exchange is a taking. Therefore, when Government through its regulatory action takes away people's property or the use of their property, Government has to compensate.

There is going to be opposition to this, Madam President, because there are people who want to undertake activities that seize other people's property without paying for it.

My view is we cannot have rational decisionmaking unless we pay people for things we take away from them. So not only is it the right thing to do, not only is it the constitutional thing to

do, but I think it is the rational thing to do as well. And my prediction is, when we have to compensate people for taking their property, we are going to take less of it, and I think the people will rejoice.

So I want to congratulate Senator DOLE for his leadership. I am happy to be a sponsor of this amendment. I think it is an important first, modest step, but I believe the American people are ready to fully reaffirm private property, to fully reaffirm the fifth amendment. I believe when we do that, we will preserve economic freedom without which political freedom cannot be sustained.

I yield the floor.

The PRESIDING OFFICER. Without objection, amendment 1715 is withdrawn.

So the amendment (No. 1715) was withdrawn.

The PRESIDING OFFICER. Who seeks recognition?

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Madam President, I would like to say that I really appreciate what Senator BUMPERS has done in accepting Senator DOLE's modification to the private property rights amendment. I fully support the efforts to clarify how important private property rights are in this country.

I have been watching, slowly but surely, private property rights take a back seat to environmental regulations. The EPA regulations often have the effect of taking private property because they render property useless—whether it is undeveloped or developed land.

This issue is very important to America. The right of protection of private property is in our Constitution. It built this country. Family farms and businesses are the wealth of generations of work. It is important that we protect this private property. I appreciate the efforts of Senator DOLE and Senator BUMPERS to assure that no bureaucrat can take private property without a takings impact assessment so that we know how much the taking is going to cost and that the private property owner will be properly compensated if the Government takes the property by any means.

I am pleased that Senator DOLE's legislation will be part of the bill. I think it is very important that as we go into this next year that all of the bills that we take up should have as a primary goal keeping the private property rights protection of our Constitution. The taking of land by regulation is every bit as much a taking of land as if the Government took the title to that property, because people are not going to be able to afford to keep undeveloped land if they have so many assessments and so many regulations and so

many ways that they cannot use it for its ultimate purpose. That is a taking, Madam President, that we cannot permit.

I thank you, Madam President. I am pleased that we will be able to make sure that in this case, private property rights are observed. I yield the floor.

Mrs. KASSEBAUM. Madam President, I support this amendment, the Private Property Rights Act of 1994.

Private property rights are a foundation of our democratic, free-market system, and they always have been. We know from history that Thomas Jefferson initially proposed that the Declaration of Independence should proclaim the rights of "life, liberty, and property." Without private property there can be no contract, no exchange, no personal economic security.

In our time, countries of the former communist bloc have reached the same conclusion: Private ownership and management of a nation's wealth are fundamental to national prosperity. Put another way, private property is a protector of the general welfare.

That is why our Constitution prohibits the Government from taking private property without adequate compensation. The Supreme Court has held that excessively burdensome regulation may trigger this constitutional protection. The task of defining the constitutional limits on so-called regulatory takings should remain with the Court—and, under this legislation, it does.

This bill does not expand the fifth amendment right to property. Contrary to the chicken-little outcry of some opponents, the bill will not preclude Federal health, safety, or environmental regulation. To the extent that those regulations constitute takings, they already are prohibited by the Constitution.

The bill does not change the substantive rules, but it ensures that Federal regulators play by them. It establishes an up-front procedure—a takings impact assessment—to ensure that individual regulations square with the fifth amendment before they become law.

Today, our citizens too often are presented with a bureaucratic fait accompli. Their property may be unconstitutionally taken by regulation, but their rights can be vindicated only through costly, time-consuming lawsuits. For many, that simply is not an option. I believe the Federal Government has an affirmative obligation to guarantee the constitutional rights of its citizens. It is not enough merely to react when challenged in court.

Some have argued that the up-front constitutional analysis proposed by this bill will be costly. I share a deep concern about cost, but in this context I find that argument specious. Is complying with the Constitution really too costly? Do we disregard our citizens'

rights to free speech, to free exercise of religion, or to freedom from unreasonable search and seizure because vindicating those rights would be expensive? The fifth amendment, too, is more important than paperwork reductions or savings in staff time.

Moreover, I suspect this amendment will cost less than its critics anticipate. I also expect substantial savings from the reduction in litigation fighting unconstitutional takings.

This legislation reaffirms that the Constitution governs the regulatory process. I fail to understand how any official sworn to uphold the Constitution could oppose that purpose, and I urge my colleagues to support it.

The PRESIDING OFFICER. Without objection, amendment No. 1729, as modified, is agreed to.

AMENDMENT NO. 1720

Mr. BREAUX. Madam President, I rise today to speak in support of S. 318, the Outer Continental Shelf Deep Water Royalty Relief Act. I commend the senior Senator of Louisiana for introducing this economically prudent bill, which would provide for the energy security of the Nation through encouraging the production of domestic oil and gas resources in deep water on the Outer Continental Shelf in the Gulf of Mexico. I agree with Senator JOHNSTON that this legislation is vitally needed to reduce our reliance on foreign oil, maintain a vital infrastructure, create jobs, and minimize the risk of oil spills.

Madam President, the domestic energy industry is on the endangered industries list and continues to decline. Thousands of oil industry workers have been laid off and it looks like many more may become unemployed in the near future. Over 400,000 jobs have been lost in the oil and gas industry in the last 10 years. Our national security depends on access to dependable domestic energy reserves. The expertise needed to develop oil and gas is highly skilled and trained, now that the remaining domestic reserves are increasingly more difficult to recover. Unless we take steps today to help preserve a viable domestic industry, the next industry crisis may be chronic and very damaging to our economy.

Finally, this bill is also environmentally sensible because it offers a tremendous opportunity for the discovery and production of new world class natural gas and oil fields in the only undeveloped domestic area of high resource potential open for exploration and production. Furthermore, the most recent data obtained from the minerals management survey shows that only 2 percent of the world's oil spills are the result from Outer Continental Shelf [OCS] development. In contrast, 45 percent of the world's oil spills come from transportation related, or tanker spills. The more we import, the higher the risk of large oil spills.

A significant component of our strategy to assure the availability of domestic supply is the development of the Outer Continental Shelf [OCS], particularly areas in the deep water over 1,200 feet. The OCS contains almost one-quarter of all estimated remaining domestic oil and gas reserves, much of which are in deep water. According to the Department of the Interior estimates, there are 11 billion barrels of oil equivalent in the Gulf of Mexico in waters of a depth of 200 meters or more. The costs of finding and producing oil and gas in deep water areas are astronomical; for example, a state-of-the-art rig in deep water, over 3,000 feet, can cost more than \$1 billion, as opposed to \$300 million for a conventional fixed leg platform in 800 feet of water.

Based on similar large-scale projects, the development of the deep water of the Gulf of Mexico would create tens of thousands of jobs in the oil industry and a multiple of that in the general economy. The investment required to find, develop, and produce 5 to 10 billion barrels of oil could range from \$50 to \$100 billion. Since various studies have estimated that every billion dollars' worth of investment could create 20,000 jobs, a large-scale effort could create up to 1 million jobs.

Under current economic conditions, most oil and gas potential in the Gulf of Mexico will not attract investment, due to the high cost of finding and producing hydrocarbons in a hostile deep-water environment. S. 318 will attract such investment and provide an incentive to the domestic energy industry by providing that the Secretary of the Interior can reduce or eliminate royalties on nonproducing leases, and on new production from any lease located in depths of 200 meters or more in the western or central planning areas of the Gulf of Mexico until capital costs related to such production have been recovered.

I urge my colleagues to join me in supporting this important legislation.

Mr. CONRAD. Madam President, I rise to express my support for the bill before us today S. 2019, the Safe Drinking Water Act Amendments of 1994. S. 2019 will provide the Nation with a more workable, rational, and flexible law that decreases the burden on small systems without jeopardizing public safety. In fact, I am convinced that the changes contained in S. 2019 will enhance public safety by giving States the flexibility to allocate their scarce resources to their most pressing needs.

I had some serious concerns with S. 2019 as it was reported out of committee. It imposed new mandates on States, failed to provide regulatory flexibility, and did not do enough to balance risk and cost. Along with other Senators, I brought my concerns about S. 2019 to the committee, and they worked with us very diligently to fix the problems with the bill. As a result,

I believe we now have a very solid, workable bill. I appreciate the chairman's willingness to work through these issues and compliment him, Senator CHAFEE, and the other Senators who have worked together to produce this legislation.

Back in 1992, Congress took the first steps toward trying to fix the Safe Drinking Water Act when it approved monitoring relief for small systems under the Chafee-Lautenberg amendment. The Senate also narrowly rejected a much more far-reaching amendment that would have held up new drinking water regulations until the EPA could more fully assess their need. I supported that amendment and believe that it started a process which has brought us to this point today.

The Safe Drinking Water Act is clearly a law that needs fixing. It is a perfect example of a mandate that places an unnecessary burden on States and communities. For example, the current statute requires that EPA regulate 25 new contaminants every 3 years, regardless of the overall risk posed by these contaminants. Mr. President, that is ridiculous. It is regulation for regulation's sake. In fact, this approach can actually increase public health risks by forcing communities to devote a disproportionate share of their scarce resources to drinking water regulation. The Act also requires systems to test for almost 100 contaminants, regardless of whether those contaminants are found in the area or not. According to our state health department, North Dakota systems are testing for at least 10 pesticides that are not used and do not occur in the State.

The current law imposes a particularly large burden on small water systems. Almost all of the water systems in my State qualify as small systems, and 87 percent of all systems nationally are small. These systems cannot afford the expensive testing and treatment technology required by the Safe Drinking Water Act. If they cannot meet these requirements what, then, is their alternative? They can force their customers to pay hundreds or thousands of dollars a year to comply; they can apply for the very small amount of assistance available through various Federal agencies; they can be in non-compliance and face stringent penalties from EPA; or they can abandon their public water systems and return to unregulated private wells. In my State, Mr. President, people are strongly considering this last alternative. However, private wells often pose a greater health risk than water from the public system. Thus, the Safe Drinking Water Act may have the ironic effect of increasing the health risk to rural citizens instead of decreasing it.

S. 2019 provides the flexibility and assistance necessary for all systems, both

small and large, to better protect the public health at less cost. It greatly reduces the mandates and burdens imposed on States and communities. The changes to existing law are numerous, and I would like to highlight the most significant.

First, we are eliminating the unnecessary requirement that 25 contaminants be regulated every 3 years. Under S. 2019, only contaminants which present a significant threat to public health will be regulated. EPA will also have to base its analysis on sound science and risk assessment when determining whether or not a contaminant poses a significant enough threat to merit regulation.

We will also consider the tradeoff between risks and costs when setting the maximum contaminant level [MCL] for regulated contaminants. The current standard setting process is driven solely by technology, and EPA must select the most effective treatment technology that is affordable to large systems. S. 2019 allows EPA to select a different technology if it will provide significant savings and not sacrifice public safety. This could save communities millions of dollars in treatment costs.

EPA will also be required for the first time to publish the projected costs and benefits of a regulation when proposing it in the Federal Register. This way, all citizens will be able to see the threat being addressed and the associated costs to combat it. I believe it is important for everyone to gain a better understanding of what is behind the regulations.

Risk comparison will also be used for a specific contaminant that has the potential to be tremendously expensive to treat for—radon. Radon occurs in water in far lower concentrations than it occurs in air. Thus, radon in water presents less of a threat to public health than does radon in air. However, the proposed rule for radon would have systems spend huge amounts of money to treat for radon concentrations in water which are only a fraction of those in the air. S. 2019 allows States to direct their resources to the greatest threat by relaxing the water treatment level for radon in States that have a program to combat radon in air.

Monitoring for contaminants represents one of the greatest expenses involved in complying with the Safe Drinking Water Act, and S. 2019 reduces unnecessary monitoring requirements. It makes no sense for systems to have to test for contaminants that do not exist in the sourcewater area. In addition, systems should not have to test frequently if there is little chance of a contaminant polluting the water supply. S. 2019 reduces the burden on systems by allowing States to develop their own monitoring plans that take into account the occurrence of contaminants within the State. Systems serving less than 10,000 people will get

additional monitoring relief through reduced monitoring requirements for contaminants that are carcinogens. Finally, EPA will have to review at least 12 regulated contaminants to determine whether or not they still occur often enough to warrant continued monitoring.

As I have mentioned, small systems have a particularly difficult time meeting the requirements of the Safe Drinking Water Act. In addition to monitoring relief, S. 2019 allows small systems to use a more affordable treatment technology if they cannot afford the expensive one identified under the MCL. This alternative treatment technology would not put public health at risk, but would enable small systems to meet their needs in an affordable way.

Finally, even with all of these changes to make the Act more workable, States and small systems still desperately need additional resources to comply with drinking water requirements. Therefore, we are authorizing a State revolving loan program of \$600 million/year in 1994 and \$1 billion/year from 1995–2000. This money will be loaned, and sometimes granted, to systems in each State so they can make the investments necessary to provide safe drinking water to their users. S. 2019 further allows States to transfer funding between the Safe Drinking Water and Clean Water revolving loan funds. Thus, States will have the flexibility to address their most pressing water needs as they see fit.

S. 2019 also increases the yearly administrative grants made by EPA to the States and authorizes the use of the revolving loan fund by the States for special administrative purposes. For example, a State could use some of the fund to establish its own monitoring program, thereby reducing the long-term monitoring costs to systems.

Finally, I am pleased that my amendment regarding a sourcewater protection program was adopted. My amendment modifies the sourcewater program originally included in S. 2019 in two main ways. First, it makes the program voluntary for States so they will not have another mandate imposed upon them. Second, it requires communities to work together with the State and the affected parties in the sourcewater area to address contaminant problems in the water. My amendment requires a cooperative, problem-driven approach and gives communities a valuable new tool in their fight to keep their water safe.

In sum, S. 2019 will reduce the burden on States and communities, reduce unnecessary regulation, and provide needed relief and assistance for small systems struggling to continue providing safe drinking water. I might add that S. 2019 has the support of a broad group of water interests, including the National Rural Water Association. The

North Dakota State Health Department also believes that the changes included in S. 2019 are important and necessary. I hope to see these changes enacted into law very soon.

Mr. DOLE. Madam President, if ever there was a metaphor for Federal mandates in America it has been the Safe Drinking Water Act. I can think of few issues that have been as contentious as this one has been. In fact, I have heard from dozens of Kansas communities which are overwhelmed with EPA safe drinking water mandates they cannot afford. Many of the complaints we hear involve the sheer complexity and overkill just to comply. The system is broken—and needs to be fixed. I believe there is a general agreement on that point.

However, Madam President, I do have some concerns that his bill does not go as far as it should to bring real regulatory relief to these communities, particularly rural water systems which have extremely limited resources to comply with Washington's regulations.

I am encouraged by the degree of discussion and cooperation that has occurred already. Senator CHAFEE has worked very hard on this bill. Senators DOMENICI, KEMPTHORNE, WARNER, SIMPSON, SMITH, FAIRCLOTH, and DURENBERGER have done an outstanding job as well. I know Senator BAUCUS appreciates the impacts this law has had in his State of Montana.

I appreciate the changes that will be included in this bill since this debate began. These changes to improve EPA flexibility, a monitoring waiver for small systems serving less than 10,000 people, and provisions to assist disadvantaged communities with State revolving loan funds are indeed necessary and appreciated.

However, I would have to say this bill is not perfect by any means. I share the concerns of many of my fellow rural, agricultural State colleagues that this bill is the first step toward EPA regulation of production agriculture. My colleagues know we produce an abundant, safe and inexpensive supply of food for this Nation and for export. I remind my colleagues that we can only go so far—both scientifically and economically—before we cross the line where agricultural production is no longer a viable industry.

Likewise, Madam President, I am also concerned this legislation could adversely affect the domestic oil and gas industry, the construction industry and many other important and critical industries who may suddenly find themselves awash in additional Federal redtape in order to comply with rules and regulations that at great cost are marginal at best in terms of public health protection.

I appreciate the work that was done to modify the watershed protection provisions that were originally contained in the committee approved bill.

I will, however, reserve judgment for the future as to their effect and closely monitor the implementation of these provisions—particularly the critical aquifer protection provisions.

Eventual application of safe drinking water standards to all navigable and underground waters, in my view, is the intent of some of my colleagues in the Senate and will only lead to the imposition of new and substantial mandates to State and local governments and on American agriculture and other important national industries.

Madam President, this debate is not about whether the U.S. Senate supports safe drinking water. Of course we do. What this debate is about is whether unreasonable Federal mandates out of Washington, DC are truly serving the interests and needs of the American people to provide adequate protection of our water supplies at a reasonable cost.

Mr. HATCH addressed the Chair.

Mr. FORD. Madam President, how much time would the Senator from Utah desire?

Mr. HATCH. I think no more than 5 minutes.

Mr. FORD. Madam President, I ask unanimous consent that the Senator from Utah may have 5 minutes and at the end of his statement—does the Senator from Nebraska want some time?

Mr. EXON. Yes.

Mr. FORD. How much time does the Senator want.

Mr. EXON. Two minutes.

Mr. FORD. Two minutes.

Madam President, I ask unanimous consent that the Senator from Utah have 5 minutes, the Senator from Nebraska, [Mr. EXON], have 2 minutes, and at the end of that statement there be a period for morning business with Senators allowed to speak therein for up to 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Utah is recognized for 5 minutes.

Mr. HATCH. I thank the Chair.

I rise to support Senator BUMPER's amendment, as modified by Senator DOLE's language, which requires Federal agencies to assess the impact of their proposed actions on private property. It addresses a matter of concern to growing numbers of Utah property owners.

James Madison, rightly called the Father of the Constitution, penned a very important essay on property which appeared in the March 27, 1792, issue of the National Gazette. In the essay, Madison opined as to the meaning and importance of property. To Madison, property has a twofold nature:

This term . . . means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual." In its larger and juster meaning, it embraces everything to which a man may attach a value and have a right, which leaves to every one else the like

advantage. In the former sense, a man's land, or merchandise, or money, is called his property. In the latter sense, a man has a property in his opinions and the free communication of them. . . . In a word, a man is said to have a right to his property, he may be equally said to have a property in his rights.

Indeed, Government is instituted, according to James Madison and our other Founding Fathers, "to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. Thus being the end of Government that alone is a just Government which impartially secures to every man whatever is his own."

Sadly, Madam President, through the pale of time and in the rush by some to resolve all social problems through the heavy hand of governmental regulation, we have all too often failed to honor Madison's philosophy. All too often in order to protect the environment or to promote the aesthetics of our neighborhoods, we have placed a disproportionate burden on small landowners, in violation of the fifth amendment's command of just compensation and that property be taken only for public use. We have witnessed horror stories of the worst kind of naked arbitrary use of governmental power, where a property owner was imprisoned for cleaning up his garage and backyard because the area was declared a wetland—or where a municipality conditioned a variance to enlarge a family run hardware store on the ceding of 10 percent of their land to the city to build a bicycle path! This is nothing more than an act of extortion, and indeed, because of its national importance, this case is presently being considered by the U.S. Supreme Court. These acts have spawned a nationwide property rights movement—a "sagebrush" revolt—of small landowners, farmers and ranchers, and owners of "mom and pop" businesses. I believe that the fight to restore property rights is one of the premier civil rights issues of the 1990's.

To be sure, the need to protect our natural resources—our environment—is of great concern. It is a legacy owed to posterity. But a balance needs to be struck between conservation and development, between the environment and the right of property. Executive Order 12630, promulgated by President Reagan in 1988, attempted to reach that balance. In essence, the Executive order required Federal agencies to conduct a takings impact analysis or TIA before undertaking any proposed action regulating private property use for the protection of the environment or any other legitimate public purpose. I said that the Executive order "required" Federal agencies to conduct a takings impact analysis because, most unfortunately, this administration has refused to enforce this simple remedial measure. Executive Order 12630, for all practical purposes, is a dead letter.

That is why this amendment is so important. It would codify the TIA requirement. Thus, agencies would have to assess whether a taking of private property would occur under its proposed regulation and consider such alternatives to the proposed regulation that would lessen the adverse effects on the use or value of private property. This "assess and consider the alternatives" approach is similar to that of the National Environmental Policy Act and its requirement that agencies consider the environmental impact of proposed rules. Can we do no less for the property rights or ordinary citizens?

Madam President, I wish to personally thank Senator DOLE for his leadership on this issue. It is about time we did this. I hope that this amendment will be carried through on this bill all the way through the process, because it is about time we stood up and did what is right about property rights.

I yield the floor.

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

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 2132 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. EXON. Madam President, I yield the floor.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 2019) was ordered to be engrossed for a third reading and was read the third time.

#### MORNING BUSINESS

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. We are now in morning business, is that correct?

The PRESIDING OFFICER. That is correct.

#### OLDER AMERICANS MONTH

Mr. SARBANES. Madam President, since 1963 when President Kennedy began this important tradition, May has been proclaimed "Older Americans Month," a time set aside each year for our country to honor senior citizens for their many important accomplishments and their contributions to improving and advancing their communities and their Nation.

Those of us who have worked diligently in the U.S. Senate to ensure that older Americans are able to live in dignity and independence during their retirement years look forward to this opportunity to pause and reflect on the contributions of those citizens who played such a major role in shaping the great Nation in which we live today. We honor them for the hard work and countless sacrifices they have made

throughout their lifetimes and look forward to their continued contributions to our country's welfare.

Senior citizens of today have witnessed more technological changes than any other generation in our Nation's history. The average senior today has lived through a major depression, a world war, and incredible advancements in the fields of science, medicine, transportation, and communications. It is imperative that we address the needs of these Americans who have devoted so much of their lives to the betterment of our society. As a vigorous and consistent supporter of measures to benefit senior citizens, I am pleased that we were able in the last Congress to reauthorize the Older Americans Act. First enacted in 1965, the Older Americans Act has evolved from its original mandate to promote independent living among those older citizens with the greatest social and economic need into today's dynamic network of community and home-based services so critical to many of our Nation's seniors.

The need for such legislation becomes especially apparent during a time set aside to honor older Americans, the most rapidly growing segment of our population. Currently, older Americans comprise 12.5 percent of the country's population. In my own State of Maryland, over 735,000 individuals are over the age of 60, representing 15.6 percent of Maryland's total population. By the year 2000, that percentage is expected to increase to 16.2 percent, slightly higher than the national average. This demographic transformation poses significant challenges and opportunities, and the Older Americans Act provides an excellent framework from which to address these challenges as we move into the next century. The Older Americans Act is only the beginning. It is not enough that we honor our senior citizens. We must continue to work for and enact legislation which meets the needs of this valuable segment of our society.

As you know, the slogan for this year's Older Americans' Month is "Aging: An Experience of a Lifetime." It is this lifetime of experience which makes our seniors a particularly valuable national resource. Senior citizens in America do not sit on the sidelines, they continue to contribute to their families, their friends, their communities, and their country. Older Americans have played an integral part in bringing the serious need for health care reform to the forefront of our domestic agenda. Many seniors led the way in calling for comprehensive national health care, not only for their benefit, but for the benefit of all Americans. They have experienced the failures and the successes of our current health care system.

Older Americans have been the hardest hit by health care inflation. For

many Americans under the age of 60, a prescription is something one fills once a year. Many older Americans fill prescriptions once a month or even once a week, and older Americans as a group use four times the prescription drugs that Americans under 60 do. Most Americans under the age of 60 have been insulated from the skyrocketing cost of prescription drugs. Many seniors, on the other hand, have found their disposable income eaten up by prescription drugs. Many other seniors have seen a lifetime of savings whittled away by the long-term care of a spouse or a parent. In short, if our current health care system is not reformed, the rest of us will experience the same. As we consider health care reform, we should keep in mind the theme for this year's Older Americans' Month, "Celebrating Long Life and Good Health." Without true health care reform, many Americans will have very little to celebrate. If we are to be prepared for the needs of our Nation tomorrow, we must answer the needs of older Americans today.

My own State of Maryland has been blessed with a substantial and growing senior population. In recognition of the countless accomplishments and contributions of Maryland seniors, this year has been designated the "Year of the Senior" in Maryland. As our Nation has benefited from an active, concerned senior population, so too has the State of Maryland. As a State we have seen our seniors step in to fill the breach left by the ravages of drug abuse and violence. Countless numbers of seniors in Maryland and across the Nation are becoming surrogate parents.

While many of us assume we will be relaxing in retirement, many older Americans choose to continue a lifetime of volunteer service or even to become volunteers for the first time. For example, the National Senior Volunteer Program provides critical support for numerous retired and senior volunteer programs throughout the Nation. A good example of the effectiveness of this program is seen in the Retired and Senior Volunteer Program [RSVP] for Baltimore County, MD. This program has over 2,000 volunteers who provide over 300,000 hours of service to their community each year at a cost of less than 20 cents per volunteer hour.

RSVP for Baltimore County addresses a wide variety of community needs, with volunteers serving children in day care centers, tutoring and mentoring students from elementary through middle school students, and supporting substance abuse programs geared to high school students. In addition, RSVP volunteers work in community settings such as libraries, hospitals, hospice programs, adult day care centers, nursing homes, and provide services to isolated homebound seniors. We are all extremely fortunate that RSVP

for Baltimore County is only one of the many senior organizations contributing to the well being and advancement of both the State of Maryland and the Nation as a whole.

Madam President, I am confident that we now have an administration sensitive to the needs of older Americans and committed to affirming their continued dynamism. We are, of course, very fortunate in Maryland to have Senator BARBARA MIKULSKI serving as the chair of the Senate Labor and Human Resources Committee's Subcommittee on Aging. As we continue our observance of "Older Americans Month," I look forward to working with Senator MIKULSKI and the rest of my colleagues in affirming the continuing contributions of older Americans to our society and in ensuring that they are able to live independently and with dignity.

#### BUDGET SCOREKEEPING REPORT

Mr. SASSER. Madam President, I hereby submit to the Senate the Budget Scorekeeping Report prepared by the Congressional Budget Office under section 308(b) and in aid of section 311 of the Congressional Budget Act of 1974, as amended. This report meets the requirements for Senate Scorekeeping of section 5 of Senate Concurrent Resolution 32, the first concurrent resolution on the budget for 1996.

This report shows the effects of congressional action on the budget through May 13, 1994. The estimates of budget authority, outlays, and revenues, which are consistent with the technical and economic assumptions of the concurrent resolution on the budget (H. Con. Res. 287), show that current level spending is below the budget resolution by \$4.8 billion in budget authority and \$1.1 billion in outlays. Current level is \$0.1 billion above the revenue floor in 1994 and below by \$30.3 billion over the 5 years, 1994-98. The current estimate of the deficit for purposes of calculating the maximum deficit amount is \$311.7 billion, \$1.1 billion below the maximum deficit amount for 1994 of \$312.8 billion.

Since the last report, dated May 10, 1994, Congress approved and the President signed the Foreign Relations Authorization Act (Public Law 103-236), changing the current level of budget authority and outlays.

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE  
Washington, DC, May 16, 1994.

HON. JIM SASSER,  
Chairman, Committee on the Budget, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the 1994 budget and is current through May 13, 1994. The estimates of budget authority, outlays, and revenues are consistent with

the technical and economic assumptions of the Concurrent Resolution on the Budget (H. Con. Res. 64). This report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended, and meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32, the 1986 First Concurrent Resolution on the Budget.

Since my last report, dated May 9, 1994, Congress approved and the President signed the Foreign Relations Authorization Act (Pub. L. 103-236) changing the current level of budget authority and outlays.

Sincerely,

ROBERT D. REISCHAUER,  
Director.

THE CURRENT LEVEL REPORT FOR THE U.S. SENATE, FISCAL YEAR 1994, 103D CONGRESS, 2D SESSION, AS OF CLOSE OF BUSINESS MAY 13, 1994

(In billions of dollars)

	Budget resolution (H. Con. Res. 64) <sup>1</sup>	Current level <sup>2</sup>	Current level over/under resolution
<b>ON-BUDGET</b>			
Budget authority	1,223.2	1,218.5	-4.8
Outlays	1,218.1	1,217.1	-1.1
Revenues:			
1994	905.3	905.4	0.1
1994-98	5,153.1	5,122.8	-30.3
Maximum deficit amount	312.8	311.7	-1.1
Debt subject to limit	4,731.9	4,490.5	-241.4
<b>OFF-BUDGET</b>			
Social Security outlays:			
1994	274.8	274.8	( <sup>3</sup> )
1994-98	1,486.5	1,486.5	( <sup>3</sup> )
Social Security revenues:			
1994	336.3	335.2	-1.1
1994-98	1,872.0	1,871.4	-0.6

<sup>1</sup> Reflects revised allocation under section 9(g) of H. Con. Res. 64 for the Deficit-Neutral reserve fund.

<sup>2</sup> Current level represents the estimated revenue and direct spending effects of all legislation that Congress has enacted or sent to the President for his approval. In addition, full-year funding estimates under current law are included for entitlement and mandatory programs requiring annual appropriations even if the appropriations have not been made. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

<sup>3</sup> Less than \$50 million.

Note.—Detail may not add due to rounding.

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE; 103D CONGRESS, 2D SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1994, AS OF CLOSE OF BUSINESS MAY 13, 1994

(In millions of dollars)

	Budget authority	Outlays	Revenues
<b>ENACTED IN PREVIOUS SESSIONS</b>			
Revenues			905,429
Permanents and other spending legislation <sup>1</sup>	721,182	694,713	
Appropriation legislation	742,749	758,885	
Offsetting receipts	(237,226)	(237,226)	
Total previously enacted	1,226,705	1,216,372	905,429
<b>ENACTED THIS SESSION</b>			
Emergency Supplemental Appropriations, FY 1994 (Pub. L. 103-211)	(2,286)	(248)	
Federal Workforce Restructuring Act (Pub. L. 103-226)	48	48	
Offsetting receipts	(38)	(38)	
Housing and Community Development Act (Pub. L. 103-233)	(410)	(410)	
Extending Loan Ineligibility Exemption for Colleges (Pub. L. 103-235)	5	3	
Foreign Relations Authorization Act (Pub. L. 103-236)	(2)	(2)	
Marine Mammal protection Act Amendments (Pub. L. 103-238)		4	
Total enacted this session	(2,683)	(643)	

THE ON-BUDGET CURRENT LEVEL REPORT FOR THE U.S. SENATE; 103D CONGRESS, 2D SESSION, SENATE SUPPORTING DETAIL FOR FISCAL YEAR 1994, AS OF CLOSE OF BUSINESS MAY 13, 1994—Continued

(In millions of dollars)

	Budget authority	Outlays	Revenues
<b>ENTITLEMENTS AND MANDATORIES</b>			
Budget resolution baseline estimates of appropriated entitlements and other mandatory programs not yet enacted <sup>2</sup>	(5,562)	1,326	
Total Current Level <sup>3,4</sup>	1,218,460	1,217,056	905,429
Total Budget Resolution	1,223,249	1,218,149	905,349
Amount remaining:			
Under Budget Resolution	4,789	1,093	
Over Budget Resolution			80

<sup>1</sup> Includes Budget Committee estimate of \$2.4 billion in outlay savings for FCC spectrum license fees.

<sup>2</sup> Includes changes to baseline estimates of appropriated mandates due to enactment of Pub. L. 103-66.

<sup>3</sup> In accordance with the Budget Enforcement Act, the total does not include \$14,145 million in budget authority and \$9,057 million in outlays in emergency funding.

<sup>4</sup> At the request of Budget Committee staff, current level does not include scoring of section 601 of Pub. L. 102-391.

Notes.—Numbers in parentheses are negative. Detail may not add due to rounding.

INTERNATIONAL INSTITUTE OF METROPOLITAN DETROIT

Mr. LEVIN. Madam President, the International Institute of Metropolitan Detroit is celebrating 75 years of service to our multi-ethnic community. The institute was founded to help newcomers to America become creative and productive members of our society. Besides helping new immigrants with counseling, job placement, naturalization assistance, and instruction in English, it educates the community about the various ethnic groups and sponsors many cultural events.

A series of commemorative events is taking place this anniversary year, none more important than the induction of five new members to the International Heritage Hall of Fame. The hall of fame was founded 10 years ago to honor distinguished area leaders, each of whom represents an ethnic segment of the community and has made significant contributions to the community as a whole.

I would like to say a word or two about each of the honorees who will be inducted into the hall of fame on May 25.

Mary Bell, president of Bell Broadcasting, is a leader in social service, cultural, religious, and professional organizations. Her firm, established in 1956, constructed the first black radio station in America. She serves on many boards, is a strong promoter of the United Negro College Fund, and has received awards from diverse civic organizations.

Father William Cunningham is a name in Detroit that is synonymous with Focus: HOPE. He founded this civil and human rights organization in 1968, and in 26 years it has grown from distributing food to tens of thousands of people to a state-of-the-art place of manufacturing and education which is

training a work force for the jobs of the 21st century.

Yousif Ghafari founded a multidiscipline architectural, engineering, and computer applications firm with offices in Michigan, Ohio, and Indiana. His philanthropic interests include local institutions of higher learning, and he is a founding member of the Wayne State University Arab-American Scholarship Fund. His company provides scholarships and employment to minority students through the Detroit public school system.

Maestro Neemi Jarvi came to Detroit in 1990 as the musical director of the Detroit Symphony Orchestra. He charmed concert goers the first evening he picked up the baton to lead the orchestra, and he has pleased his audiences ever since with his large talent, his great energy, and his joie de vivre. He has conducted major orchestras in many countries as well as the United States, and he has brought international acclaim to the Detroit Symphony Orchestra through recordings.

Mado Olga Lie, a mother of 10 children, somehow finds the spare time to serve major Detroit cultural organizations. She is devoted to the arts and sciences. She has a multicultural background and tirelessly makes contributions to a multicultural community.

Madam President, I want to congratulate each of these individuals, thank them for their devotion to Detroit, and wish them many more years of good health and good works.

IRRESPONSIBLE CONGRESS? TAKE A LOOK AT THIS

Mr. HELMS. Madam President, the incredibly enormous Federal debt is like the weather—everybody talks about the weather but nobody does anything about it. And Congress talks a good game about bringing Federal deficits and the Federal debt under control, but there are too many Senators and Members of the House of Representatives who unflinchingly find all sorts of excuses for voting to defeat proposals for a constitutional amendment to require a balanced Federal budget.

As of Tuesday, May 17 at the close of business, the Federal debt stood—down to the penny—at exactly \$4,588,708,682,253.76. This debt, mind you, was run up by the Congress of the United States, because the big spenders in the U.S. Government cannot spend a dime that has not first been authorized and appropriated by Congress. The U.S. Constitution is quite specific about that.

And pay no attention to the nonsense from politicians that the Federal debt was run up by Ronald Reagan or George Bush. The Congress is the villain.

Most people cannot conceive of a billion of anything, let alone a trillion. It

may provide a bit of perspective to bear in mind that a billion seconds ago, Madam President, the Cuban missile crisis was going on. A billion minutes ago, not many years had elapsed since Christ was crucified.

#### "WE THE PEOPLE \* \* \*" PROGRAM NATIONAL FINALS

Mr. BROWN. Madam President, on April 30-May 2, 1994, more than 1,200 students from 47 States and the District of Columbia were in our Nation's Capitol to compete in the national finals of the "We the People \* \* \* The Citizen and the Constitution" program. A class from East High School in Denver represented Colorado. These young scholars have worked hard to reach the national finals by winning local competitions in Colorado.

The members of the team representing Colorado are: John Akolt, Aisha Alkayali, Ned Augenblick, Eric Berson, Kendra Bird, Noah Borwick, John Fryer, Susan Givens, Andrea Gibson, Erin Gretzinger, Tyler Haring, Daniel Hoefler, Thomas Kerr, Kimberly Knous, Sarah Liegl, Justin Milner, Eric Nussbaumer, Kristin Petri, Ashby Plain, Nickie Robinson, Laura Ruttum, Lafayette Scott-Pierre, Jessica Smith, Alexis Sophocles, Gwendolyn Turner, Lane Volpe, and Graham Williams.

Their teacher, Dr. Deanna Morrison, deserves much of the credit for the success of the team. The district coordinator, Loyal Darr, and the State coordinator, Barbara Miller, also contributed a significant amount of time and effort to help the team reach the national finals and place in the top 10.

The "We the People \* \* \*" program, supported and funded by Congress, is the most extensive educational program in the country developed specifically to educate young people about the Constitution and the Bill of Rights. The 3-day national competition simulates a congressional hearing in which students' oral presentation are judged on the basis of their knowledge of constitutional principles and their ability to apply them to historical and contemporary issues.

Administered by the Center for Civic Education, the program is now in its 7th year and has reached more than 20 million elementary, middle, and high school students and teachers. The "We the People \* \* \*" program provides an excellent opportunity for students to gain an informed perspective of the significance of the U.S. Constitution and its place in our history and our lives.

#### TRIBUTE TO GUY L. NICHOLS

Mr. BUMPERS. Madam President, I rise today to pay tribute to Guy Nichols, an outstanding public servant from my State, who will soon retire from government service after a distinguished 50-year career, including 30 years with the National Park Service.

Guy's career with the Federal Government started at age 18 with the Civilian Conservation Corps in the Ozark National Forest. After serving in the CCC for 2 years, Guy enlisted in the U.S. Navy in 1942. He participated in several military campaigns and has been the recipient of numerous awards and commendations including the National Defense Medal and the Navy Occupation Service Medal.

After retiring from the Navy in 1962, Guy embarked on his second career of service and became a Park Service Ranger at the Fort Smith National Historic Site in Fort Smith, AR. When the park lost its chief historian in 1968, Guy took it upon himself to learn everything he could about the history of the fort and its place in our Nation's history. He quickly became the park's "unofficial historian." Guy's entertaining and informative tours have brought history alive to thousands of visitors. School groups are a particular favorite of Guy's and in 1933 he was recognized for his work with school children at the Secondary Social Studies Educators Frontier Achievement Award ceremony. Most recently, Guy was nominated for the Department of Interior's Superior Service Award.

Madam President, it is truly a pleasure to recognize and honor the accomplishments of such a devoted public servant. His talent, hard work and devotion have greatly enriched his community, State and country. I hope my colleagues will join me in extending our thanks and appreciation to Guy Nichols.

#### TRIBUTE TO MELVIN N. GREENBERG

Mr. GRAHAM. Madam President, I rise today to pay tribute to a man who has spent much of his life helping others in south Florida, my friend Mr. Melvin N. Greenberg.

Mel Greenberg is a founding shareholder of the law firm of Greenberg Traurig, one of the most distinguished and highly regarded firms in Florida. He is also a generous contributor to numerous civic causes for the benefit of all citizens.

Mel Greenberg is dedicated to promoting the highest ethical standards, professional reliability and diligence in the legal profession. He has been duly recognized for his academic excellence and brilliance as an attorney.

Mel Greenberg, in his four decades of service to the community, has chaired and held key positions at numerous national and local committees of charitable organizations. His goal is always the same: to improve the quality of life of others.

He has contributed substantially to the University of Miami as vice-chairman of the Board of Trustees; past vice-chairman of the Executive Committee; co-chairman of the Ad Hoc

Medical School Committee; and member and former chairman of the Visiting Committee of the School of Medicine.

One of Mel's greatest contributions has been to the United Way where he was chairman of the United Way Campaign. He also served as trustee with the Public Health Trust of Dade County.

Mel Greenberg will be honored next month by the leaders of the Miami business and civic community for a most distinguished career and four decades of service to the community.

Mel Greenberg has brought a commitment to excellence to every endeavor which he has undertaken. Florida is a better place because of him.

#### TRIBUTE TO CHARLES A. HARVIN, JR.

Mr. THURMOND. Madam President, I rise today to pay tribute to one of South Carolina's leading citizens and most prominent sons, Mr. Charles Alexander Harvin, Jr., who recently passed away at the age of 78.

Throughout his long and fulfilling life, Mr. Harvin was a man who was committed to making his community and State better places to live. Throughout his life he was actively involved in many different civic and service organizations, and he actually served as the chairman of 18 of them. These organizations included everything from agricultural and trucking associations to the Boy Scouts and educational boards.

Mr. Harvin's hard work toward making South Carolina an even better place to live did not go unnoticed by those who benefitted from his work. Among the many honors he received, Mr. Harvin earned distinguished service awards from the South Carolina Farm Bureau and the South Carolina Mental Health Association; part of U.S. 301 has been named the "Alex Harvin Highway"; and, he was awarded our State's highest honor, the "Order of the Palmetto".

Madam President, it is difficult to sum up the many contributions that Charles Harvin made to our State in just a few moments here on the Floor. We are all grateful for his commitment to humanity and South Carolina and he is a man who will be greatly missed by many. I would like to take this opportunity to extend my deepest condolences to his lovely wife, Thomasine; and his children, Alex, III, and Thomasine.

#### TRIBUTE TO CLIFTON G. BROWN

Mr. THURMOND. Madam President, I rise today to pay tribute to a good friend and one of South Carolina's proudest sons, Mr. Clifton G. Brown, who recently passed away.

A graduate of The Citadel, Mr. Brown had a strong commitment to public

service. It was this commitment that led him into the Army Air Corps during World War II; into city government as a council member and mayor; and into Federal service as an employee of the Department of Housing and Urban Development. Additionally, he was a respected attorney, having graduated from the University of South Carolina's School of Law, and businessman.

Mr. Brown was also involved in many other business and civic activities including several banks; the South Carolina Bar Association; the American Legion; and the University of South Carolina Alumni Association. His many efforts did not go unnoticed and he was recognized with the HUD Distinguished Service Award and the Order of the Palmetto, South Carolina's highest award.

Madam President, Clifton Brown is a man who contributed much to his community and State and he will be greatly missed by all who knew him. I would like to take this opportunity to extend my deepest sympathies to his lovely wife, Carolyn; and their two sons, Clifton, Jr., and John.

#### SAM BROWN NOMINATION

Mr. HATFIELD. Madam President, as the administration seeks to fill several important positions in our Government, I commend highly to my colleagues Mr. Samuel Brown, who is the President's nominee for the rank of Ambassador during the tenure of service as Head of Delegation to the Conference on Security and Cooperation in Europe.

The CSCE has an important agenda to consider, including matters relating to human rights, democracy and the rule of law. I believe that the Senate should move quickly to approve Mr. Brown's nomination.

I first came to know Sam Brown during his days as an activist opposing the war in Vietnam. Mr. Brown believed, as I did, that it was most productive to work within our system of government to bring an end to that war. In the ensuing years, Mr. Brown served with distinction as the Director of ACTION, which at that time also included the Peace Corps.

In reviewing Mr. Brown's qualifications for this position, I am aware that concerns have been raised about his lack of military service. This has not been a hindrance to previous CSCE representatives, including Ambassador Max Kampleman, and I believe that it should not be an obstacle to Mr. Brown's confirmation. The European security mission of the CSCE goes far beyond military security and Mr. Brown has spent a considerable amount of time over the past several months in preparation for this mission.

Because he is qualified and holds a proven record of public service and active concern for international affairs, I

look forward to supporting Sam Brown's nomination.

#### MEMORIAL TO J.P. "JAY" HUMPHREYS

Mr. BOND. Madam President, it is my regret to announce the death of a man of principle and integrity, a man who dedicated his life to the preservation of freedom.

Jay Humphreys died on October 6, 1993, in Joplin, MO, where he had lived for 38 years. He was 70.

He was a man who lived his life according to his principles—all of which sprung from his cornerstone belief in the God-given right to freedom.

Jay Humphreys was born September 13, 1923, in Raymond, KS.

He graduated from the University of Kansas with a bachelor of science in business administration.

In 1956, he joined TAMKO Asphalt Products, Inc. He served as the company's president from 1960 until his death. During his tenure as president, he turned TAMKO from a small local business into a national concern with seven manufacturing plants, providing jobs for over 1,000 employees.

Throughout his life, Jay Humphreys took to heart Thomas Paine's admonition that "those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it."

In his lifetime, Jay Humphreys played many roles: father, husband, community leader, employer, businessman. But in all parts of his life, he was first and foremost a champion for freedom. For all this, he shall be remembered and missed.

#### PRESSLER'S RURAL TELEPHONE AMENDMENTS

Mr. PRESSLER. Madam President, I want to take this opportunity to announce my support for certain amendments to S. 1822, the Communications Act of 1994. I have been working with the rural telephone coalition on a package of amendments addressing concerns regarding the preservation of universal service in a competitive environment.

S. 1822 is designed to stimulate investment in our Nation's telecommunications networks by encouraging competition. I support competition where it can work. However, competition may not be sufficient to bring advanced services to all users. Everyone seems to agree that local telephone competition is likely to occur first in large metropolitan markets. Many have questioned whether competition ever will develop in high-cost rural areas.

I was pleased to join my distinguished colleagues, Senator HOLLINGS, the chairman, Senator DANFORTH, the ranking member, and a bipartisan majority of the Commerce Committee as an original cosponsor of S. 1822. How-

ever, I am concerned that the bill, as introduced, may not further the goals of increasing investment and bringing new services to sparsely populated areas. Rural cooperatives and small telephone companies have a proven track record of upgrading their networks to bring advanced telecommunications services to their customers. Congress should ensure they can continue to do so.

Earlier today, the Commerce Committee held a hearing on the local telephone competition and universal service provisions of S. 1822. Maintaining universal service in a changing technological and competitive environment is probably the most difficult challenge the committee faces in crafting this legislation.

S. 1822 establishes the proper sequence for dealing with these issues. Universal service mechanisms must be in place, before the local telephone loop is opened to competition. Nonetheless, I believe the bill can be improved. Policies designed for metropolitan markets—where local competition already has begun—may not be appropriate for small markets.

I have listened to the concerns raised by the telephone cooperatives, small telephone companies and small cable systems in my State. They do not believe a one-size-fits-all policy for urban and rural areas makes sense. I agree. Therefore, I will propose certain amendments to S. 1822, which are supported by the Rural Telephone Coalition.

My package of amendments would:

Ensure universal service remains a dynamic, evolving concept as technology changes;

Establish a Federal-State joint board to implement universal service principles set by Congress;

Ensure reasonably comparable service in rural and urban areas at affordable, geographically averaged rates;

Restrict infrastructure sharing benefits to providers with carrier of last resort obligations and limited economies of scale or scope;

Retain State authority to determine competitive conditions in rural areas;

Exempt rural telephone companies from interconnection, access and unbundling obligations until the FCC determines rural markets can support local competition;

Provide more flexible buyout and joint venture provisions for cable systems and telephone companies in rural areas.

I will work with Senator HOLLINGS, Senator DANFORTH, and other members of the committee to incorporate these rural safeguards in the bill. I think these amendments will increase support for the Senate's approach to local competition and universal service.

### THE HEALTH CARE PRIVACY AND PROTECTION ACT

Mr. WOFFORD. Madam President, as my colleagues are aware, the Labor and Human Resources Committee, of which I am a member, began its markup of comprehensive health reform legislation earlier today. This is the work Pennsylvanians set me to Washington to do, and I am anxious to move the process forward in a bipartisan fashion that seeks to find the highest common ground, not the lowest common denominator.

An important factor in maintaining public trust in a reformed health care system is assuring the privacy of every American's medical information. The future of health care in this country will involve the rapid exchange of information through electronic data networks. Without proper protections, information about patient medical conditions and treatments could become more susceptible to abuse and improper disclosure. That's why it is so important that health reform legislation safeguard individual rights to privacy and confidentiality.

I am happy today to cosponsor the Health Care Privacy and Protection Act, introduced by Senator LEAHY. I commend Senator LEAHY for introducing this bill and for the important contribution his hard work has made to the health care reform movement.

This bill sets down a marker for the type of safeguards we need to guarantee that every American's medical data will be kept private and confidential, except in very specific circumstances. It also gives individuals the right to know what information about them exists, how it is being used, and whether it is accurate.

Another positive aspect of Senator LEAHY's legislation is that it resolves concerns about the privacy of personal medical records right at the beginning. That is better than the Clinton approach which would have a board recommend standards for privacy 3 years down the road. Today's existing information systems already make patient medical information vulnerable to misuse and with no uniform safeguards. We must act immediately to address this situation and to ensure that once health reform is fully implemented, these protections are completely in place.

Again, I commend Senator LEAHY for this bill and offer my support. Americans will rest much easier knowing that health reform will not mean compromising their fundamental right to privacy.

### SATELLITE COMPULSORY LICENSE EXTENSION ACT OF 1994

Mr. FORD. Madam President, I ask unanimous consent that the Senate proceed to the immediate consideration of calendar No. 422, S. 1485, the

Satellite Compulsory License Extension Act of 1994; that the committee substitute amendment be agreed to and the bill, as amended, be deemed read three times, passed, and the motion to reconsider laid upon the table, and any statements appear in the RECORD as if read.

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

So the bill (S. 1485), was deemed to have been considered, read three times, and passed, as follows:

S. 1485

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Satellite Compulsory License Extension Act of 1994".

#### SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.

Section 119 of title 17, United States Code, is amended—

(1) in subsection (a)(2)(C)—  
(A) by striking out "90 days after the effective date of the Satellite Home Viewer Act of 1988, or";

(B) by striking out "whichever is later,";  
(C) by inserting "name and" after "identifying (by)" each place it appears; and

(D) by striking out " , on or after the effective date of the Satellite Home Viewer Act of 1988,";  
(2) in subsection (a)(5)—

(A) in subparagraph (C) by striking out "the Satellite Home Viewer Act of 1988" and inserting in lieu thereof "this section"; and

(B) by adding at the end thereof the following new subparagraphs:

"(D) BURDEN OF PROOF.—In any action brought under this subsection, the satellite carrier shall have the burden of proof (in the case of a primary transmission by a network station) that a subscriber is an unserved household.

"(E) SIGNAL INTENSITY MEASUREMENT; LOSER PAYS.—

"(i) GRADE B CONTOUR.—(I) Within the Grade B Contour, upon a challenge by a network affiliate regarding whether a subscriber is an unserved household, the satellite carrier shall—

"(aa) deauthorize service to that household; or

"(bb) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is unserved.

"(II) If the carrier conducts a signal intensity measurement under subclause (I) and the measurement indicates that—

"(aa) the household is not an unserved household, the carrier shall immediately deauthorize the service to that household; or

"(bb) the household is an unserved household, the affiliate challenging the service shall reimburse the carrier for the costs of the signal measurement, within 45 days after receipt of the measurement results and a statement of the costs.

"(III)(aa) Notwithstanding subclause (II), a carrier may not be required to test in excess of 5 percent of the subscribers that have subscribed to service before the effective date of the Satellite Compulsory License Extension Act of 1994, within any market during a calendar year.

"(bb) If a network affiliate challenges whether a subscriber is an unserved household in excess of the 5 percent of the subscribers within any market, the affiliate may conduct its own signal intensity measurement. If such measurement indicates that the household is not an unserved household, the carrier shall immediately deauthorize service to that household and reimburse the affiliate, within 45 days after

receipt of the measurement and a statement of costs.

"(ii) OUTSIDE THE GRADE B CONTOUR.—(I) Outside the Grade B Contour, if a network affiliate challenges whether a subscriber is an unserved household the affiliate shall conduct a signal intensity measurement of the subscriber's household to determine whether the household is unserved.

"(II) If the affiliate conducts a signal intensity measurement under subclause (I) and the measurement indicates that—

"(aa) the household is not an unserved household, the affiliate shall forward the results to the carrier who shall immediately deauthorize service to the household, and reimburse the affiliate within 45 days after receipt of the results and a statement of the costs; or

"(bb) the household is an unserved household, the affiliate shall pay the costs of the measurement.

"(iii) RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households, a challenging affiliate shall reimburse a carrier for any signal intensity measurement that indicates the household is an unserved household.";

(3) in subsection (b)(1)(B)—

(A) in clause (i) by striking out "12 cents" and inserting in lieu thereof "17.5 cents per subscriber in the case of superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity"; and

(B) in clause (ii) by striking out "3" and inserting in lieu thereof "6";

(4) in subsection (c)—

(A) in the heading for paragraph (1) by striking out "DETERMINATION" and inserting in lieu thereof "ADJUSTMENT";

(B) in paragraph (1)—  
(i) by striking out "December 31, 1992, unless"; and

(ii) by striking out "After that date," and inserting in lieu thereof "All adjustments of";

(C) in paragraph (2)—

(i) in subparagraph (A) by striking out "July 1, 1991," and inserting in lieu thereof "January 1, 1996,"; and

(ii) in subparagraph (D) by striking out "until December 31, 1994" and inserting in lieu thereof "in accordance with the terms of the agreement"; and

(D) in paragraph (3)(A) by striking out "December 31, 1991," and inserting in lieu thereof "July 1, 1996,"; and

(5) in subsection (d)—

(A) by amending paragraph (2) to read as follows:

"(2) NETWORK STATION.—The term 'network station' means—

"(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or

"(B) any noncommercial educational station, as defined in section 111(f) of this title, that is a member of the public broadcasting service.";

(B) in paragraph (6) by inserting "and operates in the Fixed Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations," after "Commission,".

#### SEC. 3. CABLE COMPULSORY LICENSE.

Section 111(f) of title 17, United States Code, is amended—

(1) in the paragraph relating to the definition of "cable system" by striking out "wires, cables" and inserting in lieu thereof "wires, micro-wave, cables"; and

(2) in the paragraph relating to the definition of "local service area of a primary transmitter"—

(A) by striking out "comprises the area" and inserting in lieu thereof "comprises either the area"; and

(B) by inserting after "April 15, 1976," the following: "or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any subsequent modifications to such television market made pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations,".

#### SEC. 4. TERMINATION.

(a) EXPIRATION OF AMENDMENTS.—Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 207 of the Satellite Home Viewer Act of 1988 (17 U.S.C. 119 note) is repealed.

#### SEC. 5. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided under subsection (b), the provisions of this Act and amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code, (as added by section 2(2)(B) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.

#### TITLE AMENDMENT—S. 2087

Mr. FORD. Madam President, I ask unanimous consent that in the engrossment of S. 2087, passed May 17, the title be amended to read as follows: "An act to extend the time period for compliance with the Nutrition Labeling and Education Act of 1990 for certain food products packaged prior to August 8, 1994."

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

#### AUTHORITY FOR COMMITTEES TO REPORT

Mr. FORD. Madam President, I ask unanimous consent that during the recess-adjournment of the Senate that Senate committees may file committee-reported Legislative and Executive Calendar on Thursday, June 2, from 11 a.m. to 3 p.m.

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

#### HEALTH CARE PRIVACY PROTECTION ACT

Mr. FORD. Madam President, I understand that S. 2129, Health Care Privacy Protection Act, introduced earlier today by Senator LEAHY and others, is at the desk.

The PRESIDING OFFICER. The Senator is correct.

Mr. FORD. I ask for its first reading. The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 2129) to amend Title 18 of the United States Code to preserve personal privacy with respect to medical records and health-care-related information, and for other purposes.

Mr. FORD. Madam President, I now ask for its second reading, and on behalf of the Republicans, I object.

The PRESIDING OFFICER. Objection is heard.

The bill will receive its second reading on the next legislative day.

#### MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, 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.)

#### REPORT OF THE CORPORATION FOR PUBLIC BROADCASTING FOR FISCAL YEAR 1993—MESSAGE FROM THE PRESIDENT—PM 115

The PRESIDING OFFICER laid before the Senate a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

#### REPORT OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR CALENDAR YEAR 1993—MESSAGE FROM THE PRESIDENT—PM 116

The PRESIDING OFFICER laid before the Senate, a message from the President of the United States, together with an accompanying report; which was referred to the Committee on Labor and Human Resources.

#### MESSAGES FROM THE HOUSE

At 4:15 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the amendment of the House to the bill (S. 2024) to provide temporary obligational authority for the airport improvement program and to provide for certain air-

port fees to be maintained at existing levels for up to 60 days, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 322) to modify the requirements applicable to locatable minerals on public domain lands, consistent with the principles of self-initiation of mining claims, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. MILLER of California, Mr. LEHMAN, Mr. RAHALL, Mr. YOUNG of Alaska, and Mrs. VUCANOVICH as the managers of the conference on the part of the House.

The message further announced that the Speaker appoints the following Members as additional conferees on the part of the House in the conference on the disagreeing votes of the two Houses on the amendments of the House to the amendment of the Senate to the bill (H.R. 3355) to amend the Omnibus Crime Control and Safe Streets Act of 1969 to allow grants for the purpose of developing and implementing residential substance abuse treatment programs within State correctional facilities, as well as within local corrections facilities in which inmates are incarcerated for a period of time sufficient to permit substance abuse treatment":

As additional conferees from the Committee on Agriculture, for consideration of sections 4601-4608, 5105, and 5145 of the Senate amendment, and modifications committed to conference: Mr. DE LA GARZA, Mr. ROSE, Mr. STENHOLM, Mr. ROBERTS, and Mr. POMBO.

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of sections 2201-2204, 2301, and 4901-4933 of the Senate amendment, and sections 1031(b), 1038, and 1099AA-1099CC of the House amendment, and modifications committed to conference: Mr. GONZALEZ, Mr. NEAL of North Carolina, Mr. VENTO, Mr. LEACH, and Mrs. ROUKEMA.

As additional conferees from the Committee on Education and Labor, for consideration of sections 631-633, 662(e), 662(f), 811-816, 921-928, 1121-1150, 1331, 2801-2803, 3261, 3263, 3311, 3341, 3351, 3361, 3381-3383, 3501, 3707, 4001-4009, 4301-4304, 4701-4702, 4801-4809, 4901-4933, 5120, 5122, 5135, 5140, 5142-5143, and 5147 of the Senate amendment, and sections 1010-1026, 1030-1034, 1038, 1051-1052, 1065-1071, 1081-1096, 1099A-1099G, 1099H-1099O, 1099P-1099T, 1606, 1610, 1653-1654, 1902(e), 1902(f), 2201-2202, 2701-2739, 3061-3062, 3089-3090 of the House amendment, and modifications committed to conference: Mr. FORD of Michigan, Mr. KILDEE, Mr. MARTINEZ, Mr. GOODLING, and Mr. BALLENGER.

As additional conferees from the Committee on Energy and Commerce, for consideration of sections 1503-1504, 1511-1523, 1532, 1534-1535, 1537, 1902(e),

3101-3103, 3261, and 5166 of the Senate amendment, and sections 1010-1026, 1041-1044, 1606, 2901-2903, and 3086 of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mrs. COLLINS of Illinois, Mr. MOORHEAD, and Mr. BLILEY: *Provided*, That Mr. OXLEY is appointed in lieu of Mr. BLILEY solely for the consideration of sections 1534, 1902(e), and 3101-3103 of the Senate amendment and sections 2901-2903 of the House amendment: *Provided further*, That Mr. STEARNS is appointed in lieu of Mr. BLILEY solely for consideration of section 3086 of the House amendment.

As additional conferees from the Committee on Government Operations, for consideration of sections 1353-1354, 1535, and 5150 of the Senate amendment, and sections 1075-1076 of the House amendment, and modifications committed to conference: Mr. WAXMAN, Mr. LANTOS, Mr. TOWNS, Mr. CLINGER, and Mr. McCANDLESS: *Provided*, That Mr. SPRATT and Mr. KYL are appointed in lieu of Mr. WAXMAN and Mr. CLINGER solely for the consideration of sections 1535 and 5150 of the Senate amendment.

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of sections 713-715, 4601-4608, 5105, and 5145 of the Senate amendment, and modifications committed to conference: Mr. STUDDS, Mr. ORTIZ, Mr. HOCHBRUECKNER, Mr. FIELDS of Texas, and Mr. YOUNG of Alaska.

As additional conferees from the Committee on Natural Resources, for consideration of sections 3232-3233, 4601-4608, and 5145 of the Senate amendment and sections 1099U-1099Z of the House amendment, and modifications committed to conference: Mr. MILLER of California, Mr. VENTO, Ms. SHEPHERD, Mr. YOUNG of Alaska, and Mrs. VUCANOVICH: *Provided*, That Ms. ENGLISH of Arizona is appointed in lieu of Ms. SHEPHERD solely for the consideration of sections 4601-4608 of the Senate amendment: *Provided further*, That Mr. HINCHEY is appointed in lieu of Ms. SHEPHERD solely for the consideration of sections 1099U-1099Z of the House amendment.

As additional conferees from the Committee on Post Office and Civil Service, for consideration of sections 1352 and 3371 of the Senate amendment, and modifications committed to conference: Mr. CLAY, Mr. MCCLOSKEY, Ms. NORTON, Mr. MYERS of Indiana, and Mrs. MORELLA.

As additional conferees from the Committee on Rules, for consideration of sections 1353-1354 of the Senate amendment, and modifications committed to conference: Mr. MOAKLEY, Mr. DERRICK, Mr. BEILSON, Mr. SOLOMON, and Mr. GOSS.

As additional conferees from the Committee on Ways and Means, for consideration of sections 311(b), 1502, 1515-1516, 1802, 4702(e)(1), 5102, and 5113

of the Senate amendment, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. ARCHER, and Mr. CRANE.

#### PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-497. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Governmental Affairs.

"Whereas, the Federal Government has mandated new programs and transferred the responsibility of funding these programs to the several states and their political subdivisions; and

"Whereas, the Federal Government has also reduced or eliminated funding for certain programs administered at the state or local government level; and

"Whereas, the several states and their political subdivisions, as a result of economic recession and the substantial costs of these programs, experiencing severe revenue shortfalls and budget imbalances, which are further exacerbated by the need to fund these unfunded federal mandates; and

"Whereas, the several states, unlike the Federal Government, are required by their constitutions to balance their budgets, which further reduces their ability to absorb unfunded federal mandates; and

"Whereas, the State of Maine, recognizing the inequity of passing unfunded mandates on to its political subdivisions, amended its constitution in November of 1992 to prohibit state legislation or state administrative rules that require additional local government expenditures unless the Maine State Legislature funds those mandates; and

"Whereas, the federal practice of deferring program costs to the states is inherently unfair because many states, such as Maine, lack the resources to fund these programs; and

"Whereas, the Brady Handgun Violence Prevention Act, enacted recently by the United States Congress and effective on February 1994, although laudable in its goals, represents yet another unfunded federal mandate that is leading the State of Maine and its municipalities to incur new expenses related to conducting criminal background checks; now, therefore, be it

*Resolved*, That we, your memorialists, respectfully recommend that the Attorney General of the State of Maine initiate a lawsuit soon as possible that specifically challenges the continuing practice of enacting unfunded federal mandates as evidenced by the Brady Handgun Violence Prevention Act; and be it further

*Resolved*, That the Attorney General of the State of Maine, to the extent possible, work in concert with any other state that is filing or contemplating the filing of a similar lawsuit; and be it further

*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the Honorable William Clinton, President of the United States, to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States, to the Attorney General of the State of Maine and to each Member of the Maine Congressional Delegation."

POM-498. A joint resolution adopted by the Legislature of the Commonwealth of Vir-

ginia; to the Committee on Governmental Affairs.

#### "HOUSE JOINT RESOLUTION No. 138

"Whereas, the District of Columbia has operated the Lorton Penitentiary in Fairfax County through the benevolence of all Virginians; and

"Whereas, the District of Columbia has run the Lorton Penitentiary inefficiently, without respect or accountability to the neighboring citizens of Fairfax Station and Mason Neck; and

"Whereas, the District of Columbia has shown gross neglect by its failure to use standard and appropriate correctional practices; and

"Whereas, the surrounding community lives in constant fear and danger from repeated escapes from the Lorton Penitentiary; and

"Whereas, the property values of the homeowners and business owners in the neighboring communities have dropped significantly over recent years because of the public menace and danger posed by the Lorton Penitentiary; and

"Whereas, officials from the District of Columbia Department of Corrections routinely fail to report escapes to the Fairfax County police in a timely manner; and

"Whereas, during a 10-month period in 1993, 12 prisoners at the Lorton Penitentiary escaped, eight from the minimum security facility and four from the maximum security prison; and

"Whereas, 11 of these escapees have not been apprehended and are still at large; and

"Whereas, since June 30, 1993, the citizens and police expended \$16,079.60 in tax dollars and hundreds of man hours to aid in the search for escapees and to protect the community's safety; now, therefore, be it

*Resolved by the House of Delegates, the Senate concurring*, That the President and the Congress of the United States be requested to promptly and expediently revoke the District of Columbia's authority to operate the Lorton Penitentiary; and, be it

*Resolved further*, That the Clerk of the House of Representatives transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia."

POM-499. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Governmental Affairs.

#### "HOUSE JOINT RESOLUTION No. 126

"Whereas, mandates imposed by the federal government on states have increased greatly over the last several decades while federal funding of mandated programs has been sharply reduced; and

"Whereas, unfunded federal mandates result in substantial costs to state governments and place a severe strain on the states at a time when fiscal restraint is necessary; and

"Whereas, the federal government unfortunately has tended to respond to the deficit crisis and its own budgetary constraints by mandating that states carry out new programs without providing appropriate financial support for the programs and without regard to the costs imposed on the states; and

"Whereas, states already are struggling to balance their own budgets and further expansion of federal mandates would result in fiscal conditions that many states would find unmanageable; and

"Whereas, federally mandated programs not only are increasingly underfunded but are excessively specific and restrictive, limiting the flexibility and choices that states may exercise in carrying them out; and

"Whereas, state governments are best positioned to ascertain the attitudes and needs of their own citizens and to make informed decisions as to how the goals for which federal programs have been established can best be carried out within their particular jurisdictions, and, indeed, were intended so to do by the framers of our constitutional system; now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the General Assembly hereby memorialize the Congress of the United States to cease its pattern of burdening state governments with unfunded mandates by not enacting any new programs unless sufficient funding is provided, by fully funding those mandates now in place that are deemed essential, and by eliminating mandates wherever possible; and, be it

"Resolved further, That the General Assembly also memorialize Congress to restore state authority to fashion mandated programs to best meet the particular needs of its own citizens by providing federal support in the form of block grants rather than narrow, specific categorical grants and set-aside elements; and, be it

"Resolved finally, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation to apprise them of the sense of the Virginia General Assembly on the matter of unfunded and over-regulated federal mandates."

POM-500. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Governmental Affairs.

"Whereas, Several mechanisms were created in the 1980's to help limit the growth in federal regulation of state governments, including the congressional fiscal note requirements, the federal "Paperwork Reduction Act of 1980", and the federal "Regulatory Flexibility Act"; and

"Whereas, While these mechanisms offered potential for limiting and mitigating the federal regulation burdens of state governments, the mechanisms were not perfect and the growth of mandates has continued at a rapid pace; and

"Whereas, Between 1981 and 1990, the Congress of the United States enacted twenty-seven new laws or major amendments that added significant requirements for state and local governments; and

"Whereas, House Joint Resolution 93-1012, enacted at the first regular session of the fifty-ninth general assembly, continued the activities of the Federal Budget Task Force; and

"Whereas, The Federal Budget Task Force has been authorized to continue the study of the impact of a reordering of federal government budget priorities on Colorado in light of probable reductions in the federal budget; and

"Whereas, A survey of Colorado state departments identified one hundred ninety-five federal programs containing mandates for state or local governments, over one hundred of which contained direct orders for which noncompliance will result in sanctions or the loss of federal aid; and

"Whereas, The Federal Budget Task Force has met on three occasions during the 1993

legislative interim and has made its recommendations to the governor and the general assembly no later than the required reporting date of January 1, 1994; and

"Whereas, In Colorado's 1993 fiscal year, \$793.9 million or 11.9 percent of the total state budget and \$715.8 million or 23.2 percent of general fund spending were to comply with federal mandates or conditions of aid; and

"Whereas, The Congress is currently considering at least sixty bills that contain some form of mandates or requirements for state or local governments; now, therefore,

"Be It Resolved by the House of Representatives of the Fifty-ninth General Assembly of the State of Colorado, the Senate concurring herein:

"(1) That state departments identify those bills pending in Congress and regulations to be prepared within the executive branch of the federal government that may have significant effects on state governments;

"(2) That state departments press committees and subcommittees of Congress responsible for the identified bills to consider the effect on state and local governments;

"(3) That state departments call for the preparation of fiscal notes by the congressional budget office on significant provisions of those bills before final subcommittee and committee action;

"(4) That state governments educate the public about the impact of federal regulation on state and local governments and their respective budget;

"(5) That federal, state, and local governments continue to evaluate ways to improve regulatory relief mechanisms and give high priority to the development of a more effective, efficient, and equitable intergovernmental partnership to achieve shared objectives with minimal unilateral and costly regulation.

"Be It Further Resolved, That copies of this resolution be sent to the Secretary of State each of the several states in the Union to disburse to the Speaker of the House and the President of the Senate of the state legislature, the Clerk of the United States House of Representatives, the Secretary of the United States Senate, and to each member of the Colorado Congressional Delegation."

POM-501. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Indian Affairs.

#### "HOUSE JOINT RESOLUTION NO. 25

"Whereas, by resolution of the General Assembly, eight Indian tribes have been recognized by the Commonwealth; and

"Whereas, the Chickahominy; the Chickahominy, Eastern Division; the Mattaponi; the Upper Mattaponi; the Rappahannock; and the Pamunkey tribes were recognized by House Joint Resolution No. 54 in 1983; the Nansemond tribe by House Joint Resolution No. 205 in 1985; and the Monacan tribe by House Joint Resolution No. 390 in 1989; and

"Whereas, the existence of these tribes has also been recognized by the Virginia Council on Indians, and the Mattaponi have received federal recognition of their tribal status; and

"Whereas, the members of the remaining seven Indian tribes have expressed the desire, through their leadership, for greater autonomy and local authority to deal with issues affecting tribal members; and

"Whereas, among these local issues are housing, health care, and education; and

"Whereas, the preservation of tribal identity, culture, and tradition is also a concern of the leadership of the seven tribes; and

"Whereas, federal recognition of the tribal status of these seven Virginia Indian tribes

would greatly enhance the ability of the tribes to preserve their tribal cultures and address pressing local problems affecting tribal members; now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That the Congress of the United States be hereby memorialized to grant federal recognition to the Chickahominy; the Chickahominy, Eastern Division; the Upper Mattaponi; the Rappahannock; the Pamunkey; the Nansemond; and the Monacan as Indian tribes under federal law; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia on this matter."

POM-502. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on Indian Affairs.

#### "SENATE CONCURRENT MEMORIAL NO. 1012

"Whereas, the people of the State of Arizona view with concern the current lack of funding for construction of the proposed Dilkon Health Center by the Indian Health Services; and

"Whereas, the people of the State of Arizona recognize the special needs for health services in Dilkon; and

"Whereas, the Dilkon community has spent the past ten years preparing for the health center by upgrading the highway system and increasing water and electrical capacity for the surrounding area.

"Wherefore your memorialist, the Senate of the State of Arizona, the House of Representatives concurring, prays:

"1. That the President of the United States and the One Hundred Third Congress of the United States direct the Indian Health Services agency to fund construction of the Dilkon Health Center.

"2. That the Secretary of State of the State of Arizona transmit copies of this Concurrent Memorial to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives and to each Member of the Arizona Congressional Delegation."

POM-503. A resolution adopted by the Chamber of Commerce, Key West, Florida relative to the "Save Our Everglades Constitutional Amendment"; to the Committee on the Judiciary.

POM-504. A petition from citizens of the State of New Hampshire relative to crime; to the Committee on the Judiciary.

POM-505. A resolution adopted by the Intercounty Association of Western New York relative to the right to keep and bear arms; to the Committee on the Judiciary.

PGM-506. A resolution adopted by the City of Sunrise, Florida relative to crime; to the Committee on the Judiciary.

POM-507. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on the Judiciary.

#### "SENATE CONCURRENT MEMORIAL NO. 1006

"Whereas, although the right of free expression is part of the foundation of the

United States Constitution, very carefully drawn limits on expression in specific instances have long been recognized as legitimate means of maintaining public safety and decency, as well as orderliness and the productive value of public debate; and

"Whereas, certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace and the rights of expression and sacred values of others; and

"Whereas, the American Flag to this day is a most honorable and worthy banner of a nation that is thankful for its strengths and that is committed to curing its faults and remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

"Whereas, the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect and dignity befitting the banner of that most noble experiment of a nation-state; and

"Whereas, it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency.

"Wherefore your memorialist, the Senate of the State of Arizona, the House of Representatives concurring, prays:

"1. That the United States Congress propose to the people an amendment to the Constitution of the United States, as provided by law to add to the Constitution of the United States, an article providing as follows:

"Section 1. The Congress and the states have power to prohibit the physical desecration of the flag of the United States.

"2. That the Secretary of State of the State of Arizona transmit copies of this Memorial to the President of the United States Senate, the Speaker of the United States House of Representatives and each Member of the Arizona Congressional Delegation."

POM-508. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on the Judiciary.

"SENATE CONCURRENT MEMORIAL NO. 1001

"Whereas, the United States Congress has agreed in a process of appropriations that has prevented the President of the United States from exercising his constitutional veto powers in order to protect the nation's fiscal integrity; and

"Whereas, the people of the State of Arizona view with growing concern the passage of extravagant legislation by Congress and the inability of the President to separate such legislation from an otherwise worthwhile bill.

"Wherefore your memorialist, the Senate of the State of Arizona, the House of Representatives concurring, prays:

"1. That the Congress of the United States propose and submit for ratification by the states an amendment to the Constitution of the United States to authorize the President of the United States to disapprove and veto any appropriation or provision of an appropriation bill while approving the remainder of the bill.

"2. That the Secretary of State of the State of Arizona transmit copies of this Concurrent Memorial to the President of the United States Senate, to the Speaker of the United States House of Representatives, to each Member of the Arizona Congressional Delegation and to the President of the Senate and the Speaker of the House of Representatives of each of the states in this na-

tion, together with the hopes and request of the Arizona Legislature that such state legislative bodies will swiftly adopt a similar Memorial."

POM-509. A resolution adopted by the Legislature of the State of Minnesota; to the Committee on the Judiciary.

"RESOLUTION NO. 5

"Whereas, the American flag, to this day, is a most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults; and

"Whereas, the country represented by the Stars and Stripes remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

"Whereas, the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect, and dignity befitting the banner of the United States; Now, therefore,

"Be it resolved by the Legislature of the State of Minnesota, That it urges the Congress of the United States to propose an amendment to the United States Constitution, for ratification by the states, specifying that Congress and the states shall have power to prohibit the physical desecration of the flag of the United States.

"Be it further resolved, That the Secretary of State of the State of Minnesota is directed to prepare copies of this memorial and transmit them to the President and Secretary of the United States Senate, the Speaker and Clerk of the United States House of Representatives, and Minnesota's Senator and Representatives in Congress."

POM-510. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Labor and Human Resources.

"HOUSE JOINT RESOLUTION NO. 292

"Whereas, Part H of the Individuals with Disabilities Education Act is a discretionary five-year federal grant program of early intervention services to infants and toddlers with disabilities and to their families; and

"Whereas, Part H of the Education of the Handicapped Act was enacted by Congress in October 1986 as an amendment to P.L. 94-142 because of a strong congressional desire to serve children starting at birth; and

"Whereas, Part H of the Education of the Handicapped Act was subsequently reauthorized by Congress as Part H of the Individuals with Disabilities Education Act, reflecting the preference for the use of "disabled" over "handicapped"; and

"Whereas, Virginia has participated in the grant program since 1987 and entered into full implementation in September 1993 when it commenced its fifth year of the five-year grant program; and

"Whereas, Virginia has received a considerable amount of technical and financial assistance from the federal government in expanding and improving its early intervention services since it first began participation in the federal grant program; and

"Whereas, the expansion and improvement of early intervention services in Virginia have provided substantial support for the families of infants and toddlers with disabilities and have enhanced the quality of life not only for the child with disabilities, but also for all members of the child's family; and

"Whereas, early intervention services are of vital importance to Virginia's families with infants and toddlers with disabilities and because early intervention services can

prevent or mitigate numerous problems, the expansion of early intervention services ultimately benefits all citizens of the Commonwealth and the United States; and

"Whereas, studies show that early intervention programs for infants and toddlers with disabilities reduce expenditures for special education, residential placements, and other human services; and

"Whereas, numerous state and local agencies have worked very hard to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency Part H Program in Virginia; and

"Whereas, the Virginia General Assembly established the Joint Subcommittee Studying Early Intervention Services for Infants and Toddlers with Disabilities in 1990 to study the fiscal and programmatic impact of adopting public policy for the implementation of Part H, and the joint subcommittee has continued in existence because of the complexity and importance of funding and service delivery issues; and

"Whereas, early intervention works and saves money; and the improvements that Virginia has attained cannot be maintained without participation in the federal grant program; now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That Congress be urged to reauthorize Part H of the Individuals with Disabilities Education Act so that Virginia can maintain and improve the early intervention services that are currently available in the Commonwealth so that more lives can be impacted; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit copies of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and the Virginia Congressional Delegation so that they may be apprised of the sense of the General Assembly of Virginia."

POM-511. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Labor and Human Resources.

"SENATE JOINT MEMORIAL NO. 114

"Whereas, the Tenth Amendment to the Constitution of the United States reserves to the states or to the people powers not delegated to the United States by the Constitution nor prohibited by it to the states; and

"Whereas, the Constitution of the United States does not reserve to the federal government any exclusive or limited powers relating to the control of education, nor does it prohibit states from exercising such powers; and

"Whereas, the State of Idaho enjoys a strong educational system; and

"Whereas, the strength of our educational system is derived in great part from the flexibility and versatility of our state policy which allows for the delivery of education in a variety of environments to meet a broad range of needs; and

"Whereas, the private schools and home schools of our state are an integral part of that educational delivery system; and

"Whereas, the State of Idaho recognizes the value of our nontraditional, nonpublic schools and can verify their contributions; and

"Whereas, private schools and home schools educate and graduate students at a level of academic achievement comparable to and often exceeding state and national averages of academic achievement; and

"Whereas, local control of education is vital to the maintenance of our republican form of government; and

"Whereas, any forced imposition of federal standards jeopardizes the foundation on which our form of government is based; and

"Whereas, it is the position of the State of Idaho that the role of the state in educating her people, including the preparation and monitoring of those personnel who are responsible for providing that education, is reserved to the state, the local school districts and to the parents.

"Now, therefore, be it resolved, By the members of the Second Regular Session of the Fifty-second Idaho Legislature, the Senate and the House of Representatives concurring therein, that we emphatically urge resistance to and total rejection of any attempt by the federal government to interject itself into the educational affairs of the nontraditional, nonpublic schools of this state.

"Be it further resolved, That the Secretary of the Senate be, and she is hereby authorized and directed to forward a copy of this Memorial to the President of the United States, the Honorable Bill Clinton, to the President of the Senate and the Speaker of the House of Representatives of Congress, and the congressional delegation representing the State of Idaho in the Congress of the United States."

POM-512. A joint resolution adopted by the Legislature of the Commonwealth of Virginia; to the Committee on Labor and Human Resources.

"HOUSE JOINT RESOLUTION No. 287

"Whereas, minorities have traditionally depended on access to education to increase their life options; and

"Whereas, minorities are usually least able to afford a college education, and the dramatic increase in tuition costs makes attaining a college education more difficult for such students; and

"Whereas, although the Congress has recently eased the requirements for financial aid, making college possible for many who had no hope of attending; and

"Whereas, historically "black" colleges and universities have contributed significantly to producing capable minority lawyers, judges, physicians, teachers, professors, tradespeople, and others who have excelled in their chosen professions; and

"Whereas, these institutions have provided this invaluable service to the nation during dark and difficult times in the nation's history, often not funded at a level commensurate with "white" institutions providing the similar services; and

"Whereas, these institutions have educated the majority of the nation's minorities, whom they have accepted when other institutions would not, and at great sacrifice because many of their constituents have been unable to afford a college education; and

"Whereas, there have been recent court decisions affecting the desegregation of public institutions, and new federal laws link loan default rates to the accreditation of schools; and

"Whereas, historically "black" colleges and universities in Virginia require the attention and help of national policy makers as well as financial assistance to continue their illustrious work; now, therefore, be it

"Resolved by the House of Delegates, the Senate concurring, That Congress be hereby requested to increase the funding for historically "black" colleges and universities; and, be it

"Resolved further, That the Clerk of the House of Delegates transmit a copy of this resolution to the President of the United States, the Speaker of the United States

House of Representatives, the President of the United States Senate, and the members of the Virginia Congressional Delegation in order that they may be apprised of the sense of the General Assembly of Virginia."

POM-513. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Labor and Human Resources.

"A RESOLUTION

"Whereas, reform of the American system of health care is a pressing issue of national concern; and

"Whereas, long-term care services comprise a significant portion of the American health care system; and

"Whereas, a committee was established by 1992, 276, a copy of which is attached, to study the feasibility of developing an in-home care pilot program; and

"Whereas, this committee has concluded its study, and found that New Hampshire residents are living longer and increasingly require assistance with activities of daily living to remain independent; and

"Whereas, the provision of long-term care services should be based on the needs of those who require such services and should consider an individual's preference to remain at home whenever appropriate; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring, That the general court urge that the development and provision of long-term care services be based upon a philosophy that:

"I. Is family centered;

"II. Supports and empowers the individual recipient;

"III. Is community based; and

"IV. Prioritizes the least restrictive alternative; and

"That copies of this resolution together with a copy of 1992, 276 be forwarded by the House clerk to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, each member of the New Hampshire Congressional delegation, the governor of the state of New Hampshire, and the commissioner of the New Hampshire department of health and human services."

POM-514. A concurrent resolution adopted by the Legislature of the State of New Hampshire; to the Committee on Veterans' Affairs.

"A RESOLUTION

"Whereas, New Hampshire's atomic veterans showed steadfast dedication and undisputed loyalty to their country and made intolerable sacrifices in service to their country; and

"Whereas, these atomic veterans gave their all during the terribly hot atomic age to keep our country strong and free; and

"Whereas, these atomic veterans were unknowingly placed in the line of fire, after being assured that they faced no harm, and were subjected to an ungodly bombardment of ionizing radiation; and

"Whereas, the radiation to which they were exposed is now and will continue to eat away at their bodies every second of every day for the rest of their lives with no hope of cessation or cure; and

"Whereas, because their wounds were not of the conventional type, and were not caused by the enemy but by the United States Government, the atomic veterans did not receive service-connected medical and

disability benefits and did not receive a medal such as the Purple Heart; and

"Whereas, many atomic veterans have already died and others will die a horrible and painful death; therefore, be it;

"Resolved by the House of Representatives, the Senate concurring, That atomic veterans be recognized by the federal government; and

"That the United States Senators and Representatives from New Hampshire propose or support legislation granting service-connected medical and disability benefits to all atomic veterans who were exposed to ionizing radiation and legislation issuing a medal to atomic veterans to express the gratitude of the people and government of the United States for the dedication and sacrifices of these veterans; and

"That copies of this resolution be sent by the house clerk to the President of the United States, the Vice President of the United States, the Speaker of the House, the Secretary of Defense, the Secretary of Veterans Affairs, the Chairperson of the Senate Veterans Affairs Committee, and members of the New Hampshire Congressional delegation."

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. BURNS:

S. 2125. A bill to provide for the designation of certain Federal lands in Montana as wilderness areas, to provide for multiple use and recovery of certain other Federal lands in Montana, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. ROBB:

S. 2126. A bill to amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State municipal solid waste, and for other purposes; to the Committee on Environment and Public Works.

By Mr. DANFORTH:

S. 2127. A bill to improve railroad safety at grade crossings, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN:

S. 2128. A bill to authorize an entrance fee surcharge at the Grand Canyon National Park, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. LEAHY (for himself, Mr. RIEGLE, and Mr. WOFFORD):

S. 2129. A bill to amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes; read the first time.

By Mr. DOLE (for himself and Mr. BREAUX):

S. 2130. A bill to amend the Internal Revenue Code of 1986 to adjust the death benefit limits for certain policies purchased to cover payment of burial expenses or in connection with prearranged funeral expenses; to the Committee on Finance.

By Mr. ROCKEFELLER (by request):

S. 2131. A bill to authorize additional major medical facility construction projects for fiscal year 1994, at the Department of Veterans Affairs Medical Center, Sepulveda, California, and to waive the notice and wait requirement for an administrative reorganization at that facility; to the Committee on Veterans Affairs.

By Mr. EXON:  
S. 2132. A bill to authorize appropriations to carry out the Federal Railroad Safety Act of 1970, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. BURNS (for himself, Mr. WOFFORD, and Mr. GRASSLEY):  
S.J. Res. 191. A joint resolution to designate Sunday, October 9, 1994, as "National Clergy Appreciation Day"; to the Committee on the Judiciary.

By Mr. KOHL (for himself, Mr. THURMOND, Mr. BIDEN, Mr. METZENBAUM, Mr. GRASSLEY, Mr. HEFLIN, Mr. BROWN, Mr. DECONCINI, Mr. D'AMATO, Mr. BOND, Mr. HOLLINGS, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. ROBB, Mr. SARBANES, Mr. WOFFORD, Mr. LEVIN, Mr. LAUTENBERG, Mr. CHAFEE, Mr. AKAKA, Mr. FEINGOLD, Mr. NUNN, and Mr. COCHRAN):  
S.J. Res. 192. A joint resolution to designate October 1994 as "Crime Prevention Month"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BURNS:  
S. 2125. A bill to provide for the designation of certain Federal lands in Montana as wilderness areas, to provide for multiple use and recovery of certain other Federal lands in Mon-

tana, and for other purposes; to the Committee on Energy and Natural Resources.

THE MONTANA JOBS SECURITY AND LANDS PROTECTION ACT OF 1994

Mr. BURNS. Mr. President, this morning I am introducing the Montana Jobs Security and Lands Protection Act of 1994. This bill sets aside as wilderness approximately 800,000 acres of Montana's Forest Service and Bureau of Land Management lands and almost 500,000 acres in special management areas. Equally important, it releases 5 million acres of lands which have not met the wilderness test to their traditional multiple uses.

This bill is made in Montana. It was written by natural resource providers in the living rooms of Montana. It is supported by more than 20 of Montana's most respected organizations representing more than 100,000 members.

This bill is historic because, for the first time, lands not designated wilderness will be managed with an emphasis on the job-producing activities that have sustained Montana's economy and maintained the public lands of which we are so proud.

This bill will help protect water rights and property rights which were established before designation of the wilderness areas.

PRESERVING WILDERNESS AND PROTECTING JOBS

While Montana's economy has been expanding, the jobs of people who work in Montana's natural-resources based industries have been disappearing. Job losses in timber, mining, energy, and agriculture are readily apparent.

Mr. President, I am submitting for the RECORD a list of 16 mine and sawmill closings which have taken place in Montana since 1990. These closings, which are only a partial accounting of jobs lost in mining and timber, meant the loss of more than 1,500 good paying, family jobs in Montana. This list I am submitting is only a partial accounting of the total number of jobs lost in mining and timber during the last few years. Total job losses and the loss of secondary jobs generated by mining and timber are much, much higher. I ask unanimous consent that that list be printed in the RECORD.

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

MONTANA SAWMILL AND MINE CLOSURE DETAILS (1990-1994)

Status	Operation	Year	Location	Company	Employees
Closed	Sawmill	1990	Col. Falls	WTD/CF Forest Prod.	150
Closed	Mine	1991	Libby	W.R. Grace	130
Closed	Sawmill	1991	Dillion	Stoltze Lumber	95
Closed	Sawmill	1992	Dillion	Stoltze Lumber	110
Closed	Sawmill	1992	Dixon	Flathead Post & Pole	80
Closed	Mine	1992	Troy	Sarco	340
Closed	Sawmill	1992	Kalispell	Industrial Wood Products	
Closed	Sawmill	1992	Polson	Pack River Lumber	60
Closed	Sawmill	1993	Libby	Champion International	35
Closed	Mine	1993	Garrison	Cominco	150
Closed	Sawmill	1993	Libby	Champion International	150
Closed	Sawmill	1993	Darby	Stoltze Lumber	58
Closed	Sawmill	1993	Livingston	Park County Lumber	10
Closed	Sawmill	1994	Bonner	Stimpson Lumber	
Closed	Sawmill	1994	Drummond	Tricon Lumber	63
Closed	Sawmill	1994	Superior	Crown Pacific	160
Total					1,591

Source: Intermountain Forest Industry Association, Montana Mining Association.

Mr. BURNS. Mr. President, too many of our young people are forced to leave Montana to find good-paying, family jobs. I want to see Montana's economy grow and job opportunities created in Montana.

That is why I am introducing a bill which will help ensure that Montana's economy will prosper while we preserve our best lands. Besides designating wilderness, this bill will also allow for the environmentally responsible recovery of our natural resources on our public lands.

This means jobs in agriculture, mining, timber, and energy, and it means jobs in our service industries. The businesses on Montana's main streets will grow with new natural resource jobs. Communities which are dependent on these industries will have the certainty they need and deserve.

Our entire State benefits as our businesses grow. Our counties have a larger

tax base to provide for the services our communities need, and our schools do not have to look for additional areas to cut when they are already just getting by.

Montanans expect to be able to find jobs within our State to support their families. This bill helps assure that their expectations will be met.

My bill seeks a balance between protecting wilderness, jobs, and Montana's economy. We are already approaching that threshold of that balance. Montana already has 3.4 million acres of wilderness. With this bill, Montana will become the third-highest State in the Nation in total wilderness acres. Already, there are already three times the wilderness acres in Montana than in all the States east of the Mississippi combined.

Montana's economic future depends on achieving the vital balance between protecting wilderness and preserving

jobs. One of the reasons we all enjoy living in Montana is the diversity of its people. We all have neighbors who work in town, on our farms and ranches, and in our vital natural resources sector. By using these resources, Montanans are able to provide a stable income for their families, pay community taxes for schools, and contribute to the economic health of small towns across Montana.

Sadly, there are those who want to close these family jobs down. Urged on by out-of-State special interests, they want to lock away our renewable timber base for all time, and eliminate the jobs to the thousands of Montana families that depend upon them.

RELEASING LAND TO MULTIPLE USES

My bill provides the best opportunity we have to put Montanans to work in

good-paying, family jobs in natural resources industries such as timber, mining, and energy production. It is balanced. That is what we have to strive for, a balance, in these communities who depend socially and economically in primarily western Montana to have some sort of stability. They deserve a balanced piece of legislation that will protect their jobs and also their social viability.

For too long the problem with wilderness bills has been that they do nothing concrete for the lands that they release. And the wilderness extremists simply take another bite of the apple—lock up as much land in wilderness as possible and fence everyone else out. Not only are we locked out of the areas designated as wilderness, but we are also locked out of those lands designated for further study, otherwise known as defacto wilderness.

What has been lacking has been language that provides direction to the Forest Service and to the courts that the lands released should be managed in a responsible way for the resource-based jobs that they can sustain. That helps our families, it helps our communities, and ultimately it helps our State.

The release language in this bill does just that. Without repealing any of our environmental laws, it offers direction to the Federal land managers, requiring them to manage for multiple uses of nonwilderness lands, preserving local jobs for Montanans on the 5 million acres of lands which have been carefully studied and have not met the wilderness test. This bill offers a real solution to the release problem—a problem that has kept these lands in wilderness limbo and off limits to Montana resource providers for almost a decade.

The mining industry, so vital to Montana, has come under attack recently, and I believe much of that attack is unwarranted. So-called mining reform, in my view, is another effort by out-of-State preservationists who simply want mining, and the good paying, family jobs that they represent, to move away, overseas or wherever. Out of sight, out of mind is their view.

Now the Eastern elite have decided they have another tool to help them eliminate mining, and the jobs they represent. That tool is wilderness. I was surprised to learn that most of Montana has never been mapped for its mineral potential. I do not believe Montana can afford to lock away forever some of its best job producing potential. That is why I have introduced a wilderness bill with a different focus.

My bill would actively seek ways to use our resources on released lands in an environmentally sound manner that would create the diversified job base that can support families, pay taxes, and contribute to the health of our communities. I want to see the wilder-

ness issue put to rest in Montana, while at the same time, securing the jobs for Montanans that will continue to make our State such a special place in which to live.

PROTECTING WATER, PROPERTY RIGHTS, AND EXISTING USES

My bill helps protect Montana against threats to our most precious natural resource—our water. Indications are that the Justice Department and other Federal agencies have reversed their long-standing position of not aggressively working to reserve portions of Montana's water to the Federal Government. I believe that they are going to make a run at our water.

We live in a semiarid State that is very dependent upon our limited water resources. And we have a long history of giving to the people of the State of Montana the authority to decide how that water is used. There are instances when the Federal Government should be given water, but, and this is an important point—the Federal Government should stand in line like everyone else in our State, for its share.

In no way does this bill diminish the Federal Government's current authority to use water to protect wilderness values. It has that authority now. It simply helps assure that Montana's lifeblood—its water—will not be disrupted and will continue to flow through the intricate appropriations system which has been developed by the State of Montana during the last 150 years. We just cannot let the Federal Government grab our water, it is that simple.

Property rights rival water rights in their importance to Montanans. Besides taking our water, the Federal Government wants to walk over our individual private property rights, as well. Whether it is by law or regulation, this constitutionally protected right is under assault. Now the bureaucrats want to infringe on our private property rights through land management policies. That is why I have included a provision in the bill which protects private property.

Private property rights are guaranteed to us by the fifth amendment to the Constitution. And I want to safeguard that right—that is also why I am a founding member of the Senate Private Property Rights Caucus.

My wilderness bill will not only help create the jobs Montana needs, it will ensure that when implementing the bill, the land management agencies will respect and protect private property rights.

Private property rights are important for all of Montana's businesses, including our four largest industries—agriculture, mining, timber, and oil and gas. If these industries are threatened, Montana's diversified economy is threatened. If these industries are allowed to grow, our entire economy will

benefit. I believe my bill is responsive to the working men and women of Montana because it will provide jobs and it protects our private property rights.

This bill takes an extra step to protect the rights of those who cannot step out on their own. Under current wilderness regulations, handicapped persons can be denied access to wilderness areas if they try to enter using a motorized wheelchair. My bill would end this ridiculous impediment.

MORE THAN WILDERNESS

As we consider new wilderness legislation for Montana, we must remember that we are considering much more than what acres we want to designate as wilderness. We are also making decisions about the jobs of Montanans that we are willing to protect and those that we are willing to sacrifice.

Yes, we must protect our very best wild areas. But we also must work to find a reasonable balance. We cannot just permanently lock away all our natural resources, because in doing so, we jeopardize Montana's economic diversity and economic future. That is not fair to the Montanans who live and work here today and want their children and grandchildren to have the same opportunities to live and work here in the future.

Mr. BURNS. Mr. President, I yield the floor.

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

Mr. BAUCUS. Mr. President, I ask unanimous consent to proceed as if in morning business.

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

The Senator from Montana [Mr. BAUCUS] is recognized.

Mr. BAUCUS. Mr. President, my colleague from Montana has just introduced his version of the wilderness solution in our State of Montana. It is my very fervent hope that we who represent Montana and this country can finally resolve this issue.

Montanans have been attempting for many years to solve the wilderness issue. At issue is how many of Montana's 6 million acres of roadless acreage in national Forest Service land should be designated as wilderness and how much should be returned to the forest planning process.

Montana has been wrestling with this question for 16 years. We are in this situation because about that number of years ago the Ninth Circuit Court of Appeals held that the national Forest Service did not correctly apply NEPA with respect to roadless acres in national Forest Service land.

As a consequence, the Forest Service asked the U.S. Congress to allocate the various designations of use of roadless acreage in national Forest Service land. If the Forest Service had to go

back and rewrite the environmental impact statements for every roadless area in the national Forest Service System it would be too expensive and in effect break the bank.

Therefore, the U.S. Congress has for the 29 States in our Nation that have national Forest Service roadless acreage, addressed the wilderness allocation question. Congress has done so, that is, for every State but two; Montana and Idaho.

It is a very contentious issue in our State because Montanans are outdoors people. Everybody in our State loves the out-of-doors. We hunt. We fish. We backpack. We ride horses. We also harvest grain, raise livestock, mine minerals, and harvest timber. We have recreation industries, tourist industries. Montanans are also somewhat independent people. We pride ourselves on our individualism, and each of us has our own idea as to how the land should be managed.

I would hope, Mr. President, that finally this year for the sake of Montanans and the Nation that we can finally resolve this issue.

The House of Representatives passed its version of the roadless acreage bill just yesterday. This legislation introduced by our Congressman Pat Williams, allocates about 1.7 million acres for wilderness—out of the total of 6 million.

The bill now introduced by my colleagues essentially provides for about 800,000 acres of wilderness.

I have told my colleague from Montana on many occasions that it was my intention, as soon as the House passed its version, to ask him to join me in re-introducing the same bill that he and I agreed to when we last dealt with this issue 2 years ago. Under that version, about 1.2 million acres of wilderness would be allocated wilderness. This is the measure that passed the Senate, and is the same measure that he and I agreed to a couple of years ago.

It is my firm belief that if the Senate can move the same bill that moved out of the Senate a couple of years ago that Senator BURNS and I agreed to, and send it to conference with the House, then we can get Wilderness fairly resolved, and get this issue behind us.

I urge my colleague to reconsider co-sponsoring the same bill that he and I agreed to a couple years ago. We must find a compromise.

So I urge my colleague, in addition to introducing his own bill, to join me in cosponsoring the same bill he and I agreed to so we can compromise with the House.

My colleague might disagree with the compromise that comes out of the conference. At the very least, let us keep the process on track.

Montanans want a solution. They want their delegation to resolve it; to do it in a fair, balanced way, but to resolve it.

I also think that most Montanans do not want us, as a delegation, to listen to the extremists on either side of the issue. They want a balanced, fair solution.

I do hope, finally, this year we can get this resolved. I urge my good friend and colleague to join with me in getting a compromise and in getting a compromise and in getting this finally resolved.

Mr. BURNS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BURNS. Mr. President, I extend the invitation to my friend to also take a look at the bill I have just introduced and take a good, close look at it, because it is a different approach. It does come up to around the 800,000 plus 500,000 special management.

We can sure get together and work out something, I think, that would be acceptable to both Senators which can pass this body before Mr. WILLIAMS' bill comes to the Senate or we go into conference.

So I invite Senator BAUCUS to take a look at it. I know it is a very contentious issue. It is an issue that I would like to get settled. We all would. We are all going to try very hard to do that.

By Mr. ROBB:

S. 2126. A bill to amend the Solid Waste Disposal Act to authorize local governments and Governors to restrict receipt of out-of-State municipal solid waste, and for other purposes; to the Committee on Environment and Public Works.

LOCAL GOVERNMENT INTERSTATE WASTE CONTROL ACT

Mr. ROBB. Mr. President, I rise today to introduce legislation which will protect communities from being inundated with unwanted garbage generated out of State, a problem that has plagued a number of communities all over the country and several in my own State of Virginia.

I commend Senator BAUCUS, Senator COATS, and others who have worked to attempt to resolve this issue for a number of years. Few of us can forget the long debate we had in this Chamber over this particular matter in the summer of 1992, and few of us care to repeat it.

I have worked with the Environment and Public Works Committee for the last 6 months or so to help find a workable and fair solution to this seemingly intractable problem. I introduce this legislation with the hope that it will advance the debate, and I look forward to continuing a dialog with Chairman BAUCUS and others as we begin to move forward in earnest within the coming weeks to resolve this very contentious issue. There is a new sense of urgency regarding this issue. The U.S. Supreme Court in this session alone has handed down three decisions dealing with the

interstate shipment and disposing of trash. On Monday of this week the court decided a case involving local flow control legislation which is really the flip side of the issue which this legislation addresses. As a result of these decisions, it is clear that Congress must act to provide clear rules to bring order to this growing multi-billion-dollar industry.

Because the Supreme Court has determined that garbage is commerce like any other commodity, States and localities have heretofore been powerless to halt the disposal of waste disposed of in their jurisdictions which was generated outside the State. Based on their responsibility to protect the environment, the States determine whether to issue permits for construction of landfills and are charged with monitoring the operation of landfills and incinerators to guarantee compliance with environmental laws.

The bill that I introduce today will not affect in any way the States' rights to enforce the States' environmental standards. The thrust of the legislation is to empower localities to protect themselves from unwanted trash by allowing them to decide whether landfills or incinerators located within their communities should be permitted to accept out-of-State waste. In doing so, it seeks to strike the appropriate balance between State and local authority. The real responsibility for picking up the trash and finding a place to put it down rests ultimately with localities.

Because the local community is the one most directly affected by garbage imports, this legislation vests primary authority regarding interstate wastes in local government. The legislation defines an affected local government as the political subdivision of the State charged with making land use decisions. In my view, if an elected body is competent to make decisions regarding use of the land within the community, then it is certainly competent to determine whether a landfill already permitted under State law should be allowed to accept out-of-State wastes.

Striking the right balance between State and local authority, however, was only half the battle. The other major issue implicated by placing restrictions on out-of-State wastes is how to treat existing facilities. In many cases, existing facilities which accept out-of-State wastes do so in the face of local opposition. These communities, understandably, want us to stop the garbage from flowing.

It would not be fair, however, to those who expended millions of dollars to build new landfills in compliance with the strict Federal regulations to cut off their commerce completely. Therefore, the measure that I am introducing today balances these interests by allowing the Governor of each State to limit the amount of additional

out-of-State wastes which can be disposed of in existing facilities and it does not otherwise abrogate existing contracts already in effect.

I believe the cooperation between local governments and landfill developers will grow over the next few years. Many localities are faced with the closure of their local landfills and simply do not have the resources to build new ones in compliance with strict new landfill regulations promulgated under section D of RCRA, the Resource Conservation and Recovery Act.

Increasingly, these localities will invite private landfill developers into the community to build regional landfills with the costs subsidized by other communities which export wastes. This cooperative relationship, however, can only flourish if the locality has some leverage over the development. Under current law, a local government is powerless to deny a zoning permit to a landfill developer simply because wastes from out of State will be disposed of in the landfill.

If the local government is given the power to reject out-of-State wastes, it will also have the power to accept the wastes with conditions. By allowing communities to have leverage at the bargaining table, they can enter into host community agreements which are beneficial to the locality and its neighbors. In many instances, this can be a winning proposition for the local community. The new landfill can be built at no cost to the community, and the community can charge a host community fee, which can be used to reduce taxes or pay for other projects, such as building schools. In fact, in Virginia, such an arrangement has worked out well for Charles City County. Faced with having to build a new landfill over 3 years ago, the county government invited private developers to build a new landfill which would accept out-of-State wastes. Not only did Charles City County not have to pay the cost of constructing a new landfill, but the county is not charged for disposing of its wastes there and the revenue generated by the host county agreement has allowed it to construct a new \$18 million school complex while cutting real estate taxes. In effect, the costs of the landfill are being subsidized by those export communities which choose to send wastes elsewhere at high cost.

While inviting the landfill developer into a community may not be the solution for every local government, it should remain an option for those who choose to pursue it. And under my legislation, the local government would not have to make such a decision alone. The legislation requires the local government to consult with the Governor and adjoining local governments before a decision is made.

More importantly, however, this legislation absolutely bans out-of-State waste from new facilities unless a com-

munity affirmatively agrees to imports. This is important to many communities in my State, mostly rural, that can fall prey under the existing law to unscrupulous landfill developers who, in their search for land, can run roughshod over the wishes of the locality.

I hope that my colleagues will join with me in supporting this legislation and protecting our communities from unwanted out-of-State trash.

By Mr. DANFORTH:

S. 2127. A bill to improve railroad safety at grade crossings, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE RAILROAD GRADE CROSSING SAFETY ACT OF 1994

• Mr. DANFORTH. Mr. President, every year we see improvements in transportation safety. For example, 10 million fewer motor vehicle traffic accidents occurred last year than in 1978, with 10,000 fewer deaths. Transportation mishaps involving the release of hazardous materials were cut by 80 percent during that time, from 138 to 27. The annual number of gas and hazardous liquid pipeline incidents was down from about 1,600 in 1978 to about 400 in 1992.

Similarly, accidents involving railroads fell from 11,300 to 2,300. The number of collisions involving trains and motor vehicles at grade crossings also dropped dramatically, from 13,400 in 1978 to 4,800 in 1993. There were 83 fewer collisions in 1993 than in 1992, despite record high levels of freight traffic. The number of people injured in grade crossing accidents reached a record low last year, dropping 9 percent from 1,969 in 1992 to 1,792 in 1993. There is a tragic exception to this good news trend, however. Last year alone, grade crossing fatalities increased from 579 to 614, a jump of 6 percent.

In fact, a vehicle and train collide every 90 minutes in the United States, at an average annual cost as high as \$1.8 billion in terms of medical costs, insurance payments, legal fees, and damages to railroad property. The driver of the car or truck that collides with a train is 30 times more likely to be killed than in a crash involving 2 motor vehicles. The main cause of these deaths is not inadequate signage. Over 50 percent of collisions between trains and motor vehicles occur at crossings with active warning gates, lights, and bells. Most of the time, motorists simply fail to recognize that to race a train is to race death.

The legislation that I am introducing today, the Grade Crossing Safety Act of 1994, creates no new, expensive programs. It is modest in scope, and limited to issues within the jurisdiction of the Commerce Committee. Simply stated, this bill is intended to save lives. Specifically, the measure would:

First, maximize the impact of Federal, State, and railroad safety efforts

by directing the Secretary of Transportation to make clear the allocation of responsibility for selection and installation of signal devices at public railroad-highway grade crossings;

Second, reduce public risk by including plans to close dangerous and redundant grade crossings, and policies to limit the creation of new crossings, in the highway safety management systems that States are required to develop by October 1, 1996;

Third, help ensure that existing signs and warning devices are in working order by establishing a toll-free 800 telephone number for the public to use to report problems and malfunctions at grade crossings;

Fourth, improve awareness of grade crossing dangers by increasing Federal, State, and private sector support for a multiyear, multimedia public information and law enforcement campaign through Operation Lifesaver, Inc., a nationwide, nonprofit organization created 22 years ago to reduce crashes, fatalities, and injuries at grade crossings;

Fifth, promote advanced technology development by directing the Secretary of Transportation to conduct at least two operational tests of intelligent vehicle-highway system technologies focused on grade crossing safety;

Sixth, encourage public safety by creating Federal civil penalties for any motor carrier operator who enters, without sufficient space to clear, a grade crossing; any individual who vandalizes grade crossing signs, signal, or devices; or anyone who trespasses on a railroad right-of-way, roadbed, or bridge;

Seventh, increase compliance by establishing sanctions against commercial motor vehicle operators who repeatedly violate grade crossing safety laws; and

Eighth, improve compliance with and enforcement of grade crossing laws by encouraging cooperation between the National Highway Traffic Safety Administration, the Office of Motor Carriers within the Department of Transportation's Federal Highway Administration, the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver.

Mr. President, these grade crossing safety provisions will be discussed during the Commerce Committee's June hearing on reauthorizing Federal rail safety programs. I will recommend that they be included in the committee's rail safety reauthorization bill. I urge my colleagues to support this life-saving legislation when it is considered by the Senate.

Mr. President, I ask that the text of the bill be printed in the RECORD.

The bill follows:

S. 2127

*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 "Railroad Grade Crossing Safety Act of 1994".

**SEC. 2. GRADE CROSSING SIGNAL DEVICES.**

Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) is amended—

(1) by redesignating the subsections after the first subsection (r) as subsections (s), (t), (u), and (v), respectively; and

(2) by adding at the end the following new subsection:

"(w) **GRADE CROSSING SIGNAL DEVICES.**—The Secretary shall, within 1 year after the date of enactment of this subsection, establish nationally uniform standards regarding the allocation of responsibility for selection and installation of signal devices at public railroad-highway grade crossings."

**SEC. 3. STATE HIGHWAY SAFETY MANAGEMENT SYSTEMS.**

(a) **AMENDMENT OF REGULATIONS.**—The Secretary of Transportation shall conduct a rulemaking proceeding to amend the Secretary's regulations under section 500.407 of title 23, Code of Federal Regulations, to require that each highway safety management system developed, established, and implemented by a State shall, among countermeasures and priorities established under subsection (b)(2) of that section, include—

(1) public railroad-highway grade crossing closure plans that are aimed at eliminating high-risk or redundant crossings (as defined by the Secretary); and

(2) railroad-highway grade crossing policies that limit the creation of new at-grade crossings for vehicle or pedestrian traffic, recreational use, or any other purpose.

(b) **DEADLINE.**—The Secretary of Transportation shall complete the rulemaking proceeding described in subsection (a) and promulgate the required amended regulations, not later than 1 year after the date of enactment of this Act.

**SEC. 4. EMERGENCY NOTIFICATION OF GRADE CROSSING PROBLEMS.**

(a) **TOLL FREE TELEPHONE NUMBER.**—The Secretary of Transportation shall establish, not later than 1 year after the date of enactment of this Act, and thereafter maintain an emergency notification system utilizing a toll free "800" telephone number that the public can use to convey to railroads, either directly or through public safety personnel, information about malfunctions or other safety problems at railroad-highway grade crossings. In establishing such emergency notification system, the Secretary may coordinate with, or incorporate components of, existing notification systems.

(b) **NOTICE TO PUBLIC.**—Not later than 90 days after the establishment of the emergency notification system described in subsection (a), the Secretary of Transportation shall promulgate regulations requiring railroads with railroad-highway grade crossings to display publicly at each such crossing, in a manner prescribed by the Secretary, information

(1) describing the emergency notification system;

(2) instructing the public how to use the system;

(3) stating the toll free telephone number that is available for such use; and

(4) specifying the unique number (as assigned by the Secretary) identifying such grade crossing.

(c) **TREATMENT IN JUDICIAL PROCEEDINGS.**—A court shall not hold the Secretary of Transportation or any other Federal official or agency, any State or agency or political subdivision of a State, or any railroad liable for damages caused by an action taken under

this section or by failure to perform a duty imposed by this section. No evidence may be introduced in a trial or other judicial proceeding that the emergency notification system required by this section exists or is relied upon by any governmental official or entity or any railroad.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary of Transportation for the purpose of carrying out this section \$1,000,000 for fiscal year 1995, \$500,000 for fiscal year 1996, and \$500,000 for fiscal year 1997.

(e) **COST SHARING.**—At least 30 percent of the cost of establishing and maintaining the emergency notification system required by this section shall be provided from non-Federal sources.

**SEC. 5. OPERATION LIFESAVER.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—Of amounts appropriated to the Secretary of Transportation for railroad research and development, there are authorized to be appropriated to the Secretary \$300,000 for fiscal year 1995, \$500,000 for fiscal year 1996, and \$750,000 for fiscal year 1997, to support Operation Lifesaver, Inc.

(b) **PROGRAM REQUIREMENTS.**—The Secretary of Transportation shall not provide financial assistance to Operation Lifesaver, Inc., in excess of \$150,000 for any fiscal year unless—

(1) such excess funding is for the development and implementation of a national, multiyear, multimedia public information and law enforcement program for the reduction of fatalities and serious injuries involving railroad-highway grade crossings and trespassing on railroad rights-of-way and property; and

(2) at least 30 percent of the costs of developing and implementing such program is provided from non-Federal sources, including States and railroads.

**SEC. 6. INTELLIGENT VEHICLE-HIGHWAY SYSTEMS.**

(a) **IN GENERAL.**—In implementing the Intelligent Vehicle Highway Systems Act of 1991 (23 U.S.C. 307 note), the Secretary of Transportation shall ensure that the National Intelligent Vehicle-Highway Systems Program addresses, in a comprehensive and coordinated manner, the use of intelligent vehicle-highway system technologies to promote safety at railroad-highway grade crossings. The Secretary of Transportation shall ensure that two or more operational tests funded under such act shall promote highway traffic safety and railroad safety.

**SEC. 7. PENALTIES FOR CERTAIN GRADE CROSSING VIOLATIONS.**

(a) **MOTOR VEHICLE VIOLATIONS.**—The Secretary of Transportation shall, within 6 months after the date of enactment of this Act, amend regulations—

(1) under the Hazardous Materials Transportation Act (43 App. U.S.C. 1801 et seq.) to prohibit the drive of a motor vehicle transporting hazardous materials in commerce, and

(2) under the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2501 et seq.) to prohibit the driver of any commercial motor vehicle, from driving the motor vehicle onto a railroad-highway grade crossing without having sufficient space to drive completely through the crossing without stopping.

(b) **VANDALISM; TRESPASSING.**—Not later than 6 months after the date of enactment of this Act, the Secretary of Transportation shall amend the Secretary's regulations under section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431) to make subject to a civil penalty under such Act any person who—

(1) defaces or disables, or commits any other act that adversely affects the function of, any signal system, sign, or device at a grade crossing; or

(2) trespasses on a railroad-owned or railroad-leased right-of-way, roadbed, or bridge.

**SEC. 8. VIOLATION OF GRADE CROSSING LAWS AND REGULATIONS.**

(a) **FEDERAL REGULATIONS.**—The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.), as amended by subsection (b) of this section, is further amended by adding at the end the following new section:

**"SEC. 12022. VIOLATION OF GRADE CROSSING LAWS AND REGULATIONS.**

"(a) **REGULATIONS.**—The Secretary shall issue regulations establishing sanctions and penalties relating to violations, by persons operating commercial motor vehicles, of laws and regulations pertaining to railroad-highway grade crossings.

"(b) **MINIMUM REQUIREMENTS.**—Regulations issued under subsection (a) shall, at a minimum, require that—

"(1) any operator of a commercial motor vehicle who is found to have committed a first violation of a law or regulation pertaining to railroad-highway grade crossings shall be disqualified from operating such a vehicle for a period of not less than 90 days and shall be subject to a civil penalty of not less than \$1,000;

"(2) any operator of a commercial motor vehicle who is found to have committed a second violation of such a law or regulation shall be disqualified from operating such a vehicle for a period of not less than 1 year and not more than 5 years and shall be subject to a civil penalty of not less than \$1,000; and

"(3) any employer that knowingly allows, permits, authorizes, or requires an employee to operate a commercial motor vehicle in violation of such a law or regulation shall be subject to a civil penalty of not more than \$10,000.

"(c) **DEADLINE.**—The regulations required under subsection (a) shall be issued not later than 5 years after the date of enactment of this section."

(b) **STATE REGULATIONS.**—Section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2708(a)) is amended—

(1) in paragraph (21), by striking "12020(a)" and inserting in lieu thereof "12021(a)"; and

(2) by adding at the end the following new paragraph:

"(22) **GRADE CROSSING REGULATIONS.**—The State shall adopt and enforce any regulations issued by the Secretary under section 12022."

(c) **TECHNICAL AMENDMENT.**—The Commercial Motor Vehicle Safety Act of 1986 (49 App. U.S.C. 2701 et seq.) is amended by redesignating the second section 12020 (as added by section 4009(a) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240; 105 Stat. 2156)) as section 12021.

**SEC. 9. SAFETY ENFORCEMENT.**

The National Highway Traffic Safety Administration, and the Office of Motor Carrier Safety within the Federal Highway Administration, shall on a continuing basis cooperate with the National Association of Governors' Highway Safety Representatives, the Commercial Vehicle Safety Alliance, and Operation Lifesaver, Inc., to improve compliance with and enforcement of laws and regulations pertaining to railroad-highway grade crossings. •

By Mr. MCCAIN:

S. 2128. A bill to authorize an entrance fee surcharge at the Grand Canyon National Park, and for other purposes; to the Committee on Energy and Natural Resources.

GRAND CANYON NATIONAL PARK ACT OF 1994

Mr. MCCAIN. Mr. President, today I am introducing legislation to help finance desperately needed improvements at our Nation's premier national park—our great pride and joy—the Grand Canyon.

The measure would authorize the Secretary of the Interior to establish a special public-private partnership account, under which entrance fee revenues would be matched with private donations to help fund vital projects called for in the park's general management plan.

This legislation will provide additional resources for the Grand Canyon at a time when park needs far outstrip the ability of Treasury to fund them. The measure enjoys the support of two important organizations dedicated to protecting the interests of the Grand Canyon: The Grand Canyon Trust; and, the Grand Canyon Natural History Association.

We in Arizona are proud to be home to the crown jewel of our National Park System. We take immense pride in the park and appreciate the awesome responsibility with which our country has been vested as stewards of this world class resource. We also understand that we have much work to do in order to meet those responsibilities.

By some accounts, \$2.2 billion is needed to make repairs to the park's aging infrastructure. Compare that need to be canyon's park budget this year which is only \$13 million—a gap as wide and formidable as the Grand Canyon itself.

The need is enormous and it is growing. Last year, 5 million people visited the Grand Canyon—a number that is expected to double by the turn of the century. The ever increasing demand will place even more stress on the park's aging and needy infrastructure.

To address future needs, the National Park Service has been working diligently on the park's general management plan. The plan will guide management prerogatives into the next century. The draft plan which was released earlier this year, identifies projects and programs which will help us to cope with the increased visitation, enhance visitor experience and protect the canyon's valuable resources for this and future generations.

While the plan has not been completed, preliminary reports estimate that it will cost nearly a quarter of a billion dollars to fully fund. Providing the necessary resources is a staggering challenge. The proposal I am presenting here today is one way to help us meet this enormous need.

As I said, the bill would authorize the Secretary to use fee revenues to lever-

age private contributions to help finance park projects.

In order to fund the Federal share of such partnerships, the Secretary would be authorized to add a surcharge of up to \$2 on the current \$10 per vehicle park entrance fee.

Mr. President, no one, least of all this Senator, likes the idea of higher park entrance fees. But, visitors understand that park services and infrastructure cost money and they are willing to support the park with their fees as long as they know the revenue will be used for that purpose.

Under current procedures, entrance fees are collected at the park, returned to the General Treasury and appropriated by Congress in many instances for purposes other than the needs at the Grand Canyon.

The revenues raised under the measure I am proposing would remain in a special account at the park to be used only in concert with private donations for vital park needs. Such public-private partnerships have ample and successful precedent in other areas of public administration, and are an excellent means of stretching our resources. I believe they could be a useful tool at the Grand Canyon and perhaps other national parks as well.

Again, no one likes the idea of any increase in park fees. But, ironically, we need only to look to Disney World for a reality check. Today, visitors to Disney World pay \$35 a piece to see Mickey Mouse. By comparison, Grand Canyon visitors pay a relatively modest \$10 per carload to view what John Wesley Powell aptly described as the most sublime spectacle on Earth. We all understand and accept the fact that keeping that spectacle sublime and providing for its employment by the millions who visit costs money. An added surcharge to leverage private dollars would seem to be a justified and efficient means of making ends meet, and it deserves our thoughtful consideration.

We estimate that the surcharge would generate an additional \$2 million a year. Once leveraged with money from the private sector the fund would make a significant contribution to park improvements and maintenance of infrastructure such as upgrading the park's transportation system to relieve overcrowding; maintaining trails; and improving the water system and housing, just to name a very few.

Mr. President, the creation of a special partnership account raises many questions. I, like others, want to make absolutely certain that private contributions to the park are not used in any way that would compromise park interests or values. This measure seeks to address that issue because management of the fund must be dictated solely by the needs of the park and the ethic of stewardship.

The measure calls on the Secretary of the Interior to establish regulations,

with full public comment and participation, to guide how the fund will be managed, how private donations will be solicited, for what purposes they will be used and how the partnerships will be structured and managed.

In addition, the bill specifically requires that any project funded under the partnership must be consistent with the statutes, regulations and rules governing the park, and that it is specifically approved and prioritized within the general management plan. These plans are developed with public participation and are subject to all the applicable environmental laws. Ensuring that partnership funds are used only for purposes authorized by the relevant management plan will ensure that only necessary and appropriate projects are undertaken.

Many businesses and individuals want to contribute to the protection of Grand Canyon National Park because they realize that it is a national treasure and that it needs and deserves our assistance. Nevertheless, we must take steps to ensure that these donations are not offered with strings attached that would place commercial interests ahead of park needs and values.

Mr. President, Grand Canyon and our other national parks are at a critical point. Demand for park resources is increasing, as is the cost of maintenance. Several weeks ago, Secretary Babbitt began a tour to examine many of these problems firsthand. I commend him for taking this action.

While his tour is not yet complete, he is certain to discover that the needs of our parks far outstrip the ability of a limited Federal treasury to finance them. When our parks are not properly funded it makes resource management, interpretation and other essential duties of the Park Service impossible.

Last year, the Interior Appropriations committee increased the operations account of the Parks Service by 9 percent above the fiscal year 1993 level in an effort to improve conditions. While this increase was helpful, it is not nearly enough to meet the needs at the Grand Canyon and I am sure other parks as well. Given the current budget situation the administration and Congress is not likely to provide further increases to adequately to meet the need.

We must look for innovative ways to fully fund the preservation and enhancement of our Nation's Park System. I believe the method I am proposing is a viable option that should be fully examined and considered.

Mr. President, this year we celebrate the 75th anniversary of Grand Canyon National Park. It is most appropriate that we recommit ourselves to the charge of Theodore Roosevelt "to keep the canyon for our children and our children's children, and for all who come after us, as one of the great sights which every American if he can travel at all should see."

Let us work to meet the needs at the Grand Canyon with that purpose firmly in mind.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 2128

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

#### SECTION 1. FINDINGS.

Congress finds the following:

(1) As of the date of enactment of this Act, the existing infrastructure of Grand Canyon National Park is not adequate to serve the purposes for which the Park was established.

(2) Improving the infrastructure of the Park would enhance the natural and cultural resources of the Park and the quality of the experiences of visitors to the Park.

(3) Through the development of a general management plan, the Director of the National Park Service has identified reasonable measures that are necessary to improve the infrastructure and related services of the Park, including making improvements to transportation facilities and visitor services, and reusing historic structures appropriately.

(4) In order for the Director to implement the general management plan referred to in paragraph (3) at the Park, it is necessary for the Director to be authorized to—

(A) enter into agreements with non-Federal entities to share the costs of the improvements; and

(B) assess and collect a special surcharge in addition to the entrance fees otherwise collected by the National Park Service.

#### SEC. 2. GRAND CANYON ENTRANCE FEE SURCHARGE.

Notwithstanding any other provision of law, the Secretary of the Interior shall—

(1) authorize the Superintendent of the Grand Canyon National Park to charge and collect, in addition to the entrance fee collected pursuant to section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a), a surcharge in an amount not to exceed \$2 for each individual charged such entrance fee; and

(2) remit to the special account for Grand Canyon National Park infrastructure improvement amounts collected as a surcharge under such authority.

#### SEC. 3. SPECIAL ACCOUNT FOR GRAND CANYON NATIONAL PARK INFRASTRUCTURE IMPROVEMENT.

(a) ESTABLISHMENT.—The Secretary of the Treasury, in consultation with the Secretary of the Interior, shall establish in the Treasury of the United States a special account for Grand Canyon National Park infrastructure improvement.

(b) ADMINISTRATION OF ACCOUNT.—The Secretary of the Treasury shall—

(1) credit to the special account amounts remitted pursuant to section 2(2); and

(2) make funds in the special account available for use only as provided in subsection (c).

(c) USE OF FUNDS.—

(1) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, may use funds in the special account only to pay the Federal share of the cost of eligible projects.

(2) DAILY OPERATIONS.—No funds in the special account may be used for daily operation of the Grand Canyon National Park.

#### SEC. 4. ELIGIBLE PROJECTS.

(a) ELIGIBLE PROJECTS.—Subject to subsection (b), any project for the design, construction, operation, maintenance, repair, or replacement of a facility within the Grand Canyon National Park is eligible for funding in accordance with this Act.

(b) LIMITATION.—A project referred to in subsection (a) shall be consistent with—

(1) the laws governing the National Park Service;

(2) the Act entitled "An Act to establish the Grand Canyon National Park in the State of Arizona", approved February 26, 1919 (16 U.S.C. 221 et seq.), the Grand Canyon National Park Enlargement Act (16 U.S.C. 228a et seq.), and any related law; and

(3) the general management plan for the Park.

#### SEC. 5. COST-SHARING AGREEMENTS WITH NON-FEDERAL ENTITIES.

(a) AGREEMENTS REQUIRED.—The Director of the National Park Service, in consultation with the Superintendent of the Grand Canyon National Park, shall enter into a cost-sharing agreement with a non-Federal Government entity for each eligible project.

(b) CONTENT.—The cost-sharing agreement shall specify the Federal share and the non-Federal share of the cost of the project and shall provide for payment of the non-Federal share by the non-Federal entity.

(c) AUTHORITY TO COVER SEVERAL PROJECTS.—A cost-sharing agreement may cover more than one eligible project.

#### SEC. 6. REGULATIONS.

(a) REGULATIONS REQUIRED.—The Secretary of the Interior shall prescribe regulations to carry out this Act.

(b) CONTENT.—The regulations shall include the following matters:

(1) The procedures for the management of the special account.

(2) The manner in which funds for payment of the non-Federal share of the cost of an eligible project may be solicited and acknowledged.

(3) Provisions for ensuring the protection of the natural, cultural, and other resources that the Park was established to protect.

(4) Provisions to encourage funding from the private sector only for projects that contribute to the restoration and protection of the resources referred to in paragraph (3).

(5) Protections against the commercialization of the Grand Canyon National Park.

(6) Procedures to prevent the creation of a conflict of interest with respect to an employee of the Federal Government.

(7) Provisions for continuous participation of the general public in the oversight of the implementation of this Act.

(c) NOTICE AND PUBLIC COMMENT.—The Secretary shall carry out subsection (a) in accordance with section 553 of title 5, United States Code (relating to publication of notice and opportunity for public comment), without regard to any applicable exception provided in such section.

#### SEC. 7. REPORT.

(a) REPORT REQUIRED.—Not later than 5 years after the date of enactment of this Act, the Secretary of the Interior shall submit to Congress a report on the Grand Canyon National Park infrastructure improvement authority provided in this Act.

(b) CONTENT OF REPORT.—The report shall include the following matters:

(1) An assessment of the effectiveness of the exercise of authority under this Act to improve the infrastructure of the Grand Canyon National Park.

(2) Any recommended legislation with respect to—

(A) the surcharge authorized under section 2;

(B) the special account;

(C) the use of the special account for funding eligible projects; or

(D) any other matter that the Secretary determines to be related to the authority provided under this Act.

#### SEC. 8. DEFINITIONS.

As used in this Act:

(1) FACILITY.—The term "facility" includes any structure, road, trail, utility, or other facility that is used or to be used for or in support of—

(A) the protection or restoration of a natural or cultural resource;

(B) an interpretive service; or

(C) any other service or activity that the Secretary determines to be related to the operation of the Grand Canyon National Park.

(2) FEDERAL SHARE.—The term "Federal share", with respect to the cost of an eligible project, means the percent of the cost of such project that is paid with Federal funds, including funds disbursed from the special account.

(3) NON-FEDERAL SHARE.—The term "non-Federal share", with respect to the cost of an eligible project, means the percent of the cost of such project that is paid with funds other than funds referred to in paragraph (2).

(4) ELIGIBLE PROJECT.—The term "eligible project" is any project that is eligible for funding in accordance with this Act.

(5) SPECIAL ACCOUNT.—The terms "special account for Grand Canyon National Park infrastructure improvement" and "special account" mean the account established pursuant to section 3.

GRAND CANYON TRUST,  
May 9, 1994.

Hon. JOHN MCCAIN,  
U.S. Senate, Washington, DC.

DEAR SENATOR MCCAIN: Thank you for providing the Grand Canyon Trust with the opportunity to review and comment on both draft and final versions of your proposed legislation regarding entrance fees and public/private cost-sharing at Grand Canyon National Park.

We believe that your proposed legislation will greatly assist the efforts of the National Park Service and other entities who are struggling to find appropriate means to generate the additional funding so urgently needed by Grand Canyon National Park. In this regard, we strongly support the core concepts in your bill: new fees to generate incremental revenue for park projects and cost-sharing arrangements between the Park Service and nongovernmental entities.

We share your concern that Grand Canyon's pressing infrastructure and resource management needs will not be met unless Congress acts to provide the new authorities described in your legislation. And, if those needs are not met, the park environment and visitor experience will continue to deteriorate—an utterly unacceptable and unnecessary fate for the crown jewel of America's parks.

Senator McCain, we applaud your consistent leadership on behalf of Grand Canyon. This bill, the National Parks Overflights Act, Grand Canyon Protection Act, and so many other measures reflect your unwavering dedication to the needs of the park. Please be assured that we are prepared to assist you in your efforts to move the bill through the legislative process to final enactment.

Again, thank you for all you have done for the Grand Canyon.

Sincerely,

THOMAS C. JENSEN,  
Executive Director.

GRAND CANYON  
NATURAL HISTORY ASSOCIATION,  
May 6, 1994.

Hon. JOHN MCCAIN,  
U.S. Senator, Washington, DC.

DEAR SENATOR MCCAIN: I am very happy to be able to write this letter of complete and enthusiastic support for your bill designed to authorize an entrance fee surcharge at the Grand Canyon National Park, for the purpose of assuring a Federal matching pool of funds for necessary capital projects at the Park. We have previously discussed the value of such a tool to be used to foster public/private partnerships to accomplish the overdue rebuilding of infrastructure to support the crush of visitors. We further believe that the choice of Grand Canyon as the test case for such an effort will enable us to create a model that can be used by other National Parks and Monuments across the country. Please let us know how else we can support this important legislation.

Sincerely,

ROBERT W. KOONS,  
General Manager, CEO.

#### IN SEARCH OF HELP

When droning airplanes and rattling helicopters were swooping unchecked below the rim of the Grand Canyon, destroying the natural quiet, Congress wisely took steps to restore peace and tranquility by creating flight-free zones and banning aircraft below the rim.

This idea, passed into law in 1987, is now being touted as a solution to the soaring decibel levels being generated by an increase in the number of low flying aircraft in many of the nation's national parks.

If U.S. Sen. John McCain has his way, Arizona's most prized natural treasure may again serve as a model for the rest of the nation. This time, the Arizona Republican has proposed a novel public-private partnership as a way to pump some badly needed dollars into rebuilding and improving the infrastructure of Grand Canyon National Park.

Under his proposed legislation, to be introduced this week, the Secretary of the Interior would be required to impose upon visitors to Grand Canyon a surcharge of up to \$2 per vehicle. The surcharge would be placed into a special trust account, when it would be matched by contributions from corporations, foundations and individuals.

The special account could be drawn down to design, build, repair or replace the park's infrastructure, but not for daily operational expenses.

The concept behind McCain's proposal is two-fold. First is the belief that any additional entrance fees ought to stay with the park: As it is, visitors fees flow to the federal treasury and are appropriated back to the National Park Service for park operations each year. Second is the idea that the park service be allowed to enter into flexible cost-sharing agreements with the private sector in order to maximize donations earmarked for park improvements.

When it comes to the plight of the National Park Service, the financial dilemma is not illusory. Park usage is on a stampede upward, but this popularity has a price—a steep one. It is estimated that \$2.2 billion worth of park repairs are needed—a considerable undertaking even in the best of times.

Grand Canyon, the *grande dame* of the park system, is being loved to death and it shows. Trails could be improved. Housing is inadequate. Transportation and water systems are at a capacity. And if Interior Department officials are serious about a South Rim that is auto-free and capable of handling the 5 million visitors each year—a figure expected to double by the turn of the century—some form of mass transit would appear to be in the cards.

All of these are expensive propositions at a time that Congress is especially sensitive to new spending proposals. This is a reality of the times. If the American people are serious about preserving the nation's cultural and natural resources, Congress must examine creative financing measures.

McCain has thrown out one. Cost-sharing, of course, is not a new idea. Corporations and foundations underwrite numerous and worthwhile causes. What's important to keep in perspective is that the national parks cannot be for sale. Not under any circumstance. The Coney Islands and Disneylands have their place and it is not in our national treasures.

We have said it before and we'll say it again: The almighty dollar must not drive the needs of the park; the needs of the park ought to drive the fund-raising. Tom Jensen, executive director of the Grand Canyon Trust, a non-profit advocacy group of the Colorado Plateau, was right when he said, "The devil is in the details."

With adequate protections against commercialization of the park system, there may be merit in McCain's proposal. He is to be commended for trying park surcharges and private donorship into a plan that, at the least, is worthy of being discussed. One thing is a given fact: the more time that passes without the fiscal needs of Grand Canyon and the park system being met, the situation can only worsen.

[From the Arizona Daily Star, May 16, 1994]

#### FUNDING A HEALTHY CANYON

Sen. John McCain—a good fighter for Grand Canyon—has now proposed a novel plan to fund efforts to attack overcrowding at the park.

With a few caveats, the Arizona Republican's proposal looks like a sound blueprint for the maintenance of a superb Canyon experience even despite a use crisis that now portends near chaos along those ledges and cliffs.

McCain's proposal possesses the virtues of both pragmatism and timeliness.

By allowing the park to raise millions of dollars through corporate donations as well as a surcharge up to \$2 on the \$10 entrance fee, McCain's new legislation would enable Canyon administrators to attack their expensive problems in an era of scanty appropriations.

The surcharge alone should yield at least \$2.5 million a year toward the enormous needs now being identified in the still incomplete General Management Plan, since some five million visitors will strain park roads and buildings this year.

And presumably tens of millions of dollars more could be solicited from corporate America for the infrastructure account. In this way, McCain's scheme would go far toward instituting a steady funding mechanism by which the park could begin enacting the forthcoming GMP, whose implementation may cost a quarter of a billion dollars.

McCain's plan innovates with its establishment of a dedicated add-on fee. Such fees may well represent the wave of the future all

through the Park Service by allowing parks to retain collected money for their own use, rather than send them into the general fund.

Once major concern does linger about Sen. McCain's pragmatic strategy to supplement Grand Canyon National Park's \$15 million budget.

This touches the sure knowledge that in America corporate "cost sharing" agreements all too easily lend to subtle "promotional" agreements providing, for instance, for tramways plastered with corporate logos and viewpoints brought to you by big business.

True, McCain aides point out that language in the bill limits expenditures from the infrastructure fund to less visible capital uses. Yet anyone familiar with a university capital drive or museum construction knows that does not preclude the distraction of nameplates and corporate logos, even on public lands.

Furthermore, no rules now exist in the bill to guard against excessive commercialization, though its text does provide for the Secretary of Interior to write such regulations and guarantee public oversight. This leaves cause for worry about the fine line Sen. McCain's plan walks between securing new financial resources for the Canyon, and opening it to hype.

But then, it is early. For now, those who care about the Canyon should keep the creation of adequate rules curbing undue commerce in mind, even as they urge Congress to move quickly on McCain's groundbreaking, pragmatic plan to preserve a national treasure.

By Mr. LEAHY (for himself, Mr. RIEGLE, and Mr. WOFFORD):

S. 2129. A bill to amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes; read the first time.

#### THE HEALTH CARE PRIVACY PROTECTION ACT

Mr. LEAHY. Mr. President, today I am introducing, with Senators RIEGLE and WOFFORD, the Health Care Privacy Protection Act of 1994, legislation that I hope will be included in the health care reform measure that we are considering this year.

President Clinton is showing tremendous leadership in tackling health care reform. Because of his efforts, the country and the Congress are engaged in a serious debate about how to make sure that every American has health insurance and how to bring costs under control so that health care is affordable for families and small businesses.

Vermonters are particularly focused on health care reform because of our State's efforts to reform our system. I hear from hundreds of Vermonters every week who share with me their ideas about what needs to be done. They do not want a one-size-fits-all approach, and I have worked to ensure that the President's bill allows individual States the flexibility to tailor the plan to fit local needs. State flexibility has been and remains an important component of any health care reform plan if it is to be successful.

I have also concentrated my efforts on making sure that Americans' expectations of privacy for their medical records are fulfilled. That is the purpose of this bill. As intractable as questions of financing and structure may seem, I have confidence that we will find a way to respond to the American people's profound need for health security. My fear has been that the Achilles heel of our health care reform efforts would turn out to be a perception that such legislation would lead to a loss of personal privacy.

A recent public opinion poll sponsored by Equifax and conducted by Louis Harris indicated that 85 percent of those surveyed agreed that protecting the confidentiality of medical records is extremely important in national health care reform. I can assure you that if that poll had been taken in Vermont, it would have come in at 100 percent or close to it.

The distinguished Republican leader put his finger on this in his response to the President's State of the Union Address earlier this year. Senator DOLE remarked then that a "compromise of privacy" that sends information about health and treatment to a national data bank without a person's approval would be something that none of us would accept. I felt then and feel even more strongly now that health care reform will only be supported by the American people if they are assured that the personal privacy of their health care information is protected.

Indeed, without confidence one's personal privacy will be protected many will be discouraged from seeking help from an improved health care system or taking advantage of the increased accessibility we are working so hard to create.

In October last year we began a series of hearings before the Technology and the Law Subcommittee of the Judiciary Committee. I was fascinated with smart card technology and the opportunities it presents to deliver better and more efficient health care services, especially in rural areas. The health security card can expedite care in medical emergencies and eliminate paperwork burdens. But it will only be accepted if it is used in a comprehensive and secure system protecting confidentiality of sensitive medical conditions and personal privacy.

Fortunately, improved technology offers the promise of security and confidentiality and can allow levels of access limited to information necessary to the function of the person in the health care treatment and payment system.

In January we continued our hearings and heard testimony from the administration, health care providers, and privacy advocates about the Health Security Act and the need to improve upon its privacy protections.

In testimony I found among the most moving I have experienced in nearly 20

years in the Senate, the subcommittee heard first-hand from Representative NYDIA VELÁZQUEZ, our House colleague who had sensitive medical information leaked about her during her campaign. She and her parents woke up to find disclosure of her attempted suicide smeared across the front pages of the New York tabloids. If any of us have reason to doubt how hurtful a loss of medical privacy can be, we need only talk to our House colleague.

Unfortunately, this is not the only horrific story of a loss of personal privacy. I have talked with the widow of Arthur Ashe about her family's trauma when her husband was forced to confirm publicly that he carried the AIDS virus and how the family had to live its ordeal in the glare of media spotlight.

We have also heard testimony from Jeffrey Rothfeder, who described in his book, *Privacy for Sale*, how a freelance artist was denied health coverage by a number of insurance companies because someone had erroneously written in his health records that he was HIV-positive.

The unauthorized disclosure and misuse of personal medical information has affected insurance coverage, employment opportunities, credit, reputation, and a host of services for thousands of Americans. Let us not miss this opportunity to set the matter right through comprehensive Federal privacy protection legislation.

As we began focusing on privacy and security needs last year, I was shocked to learn how catch-as-catch-can are the patchwork of State laws protecting privacy of personally identifiable medical records. A few years ago we passed legislation protecting records of our videotape rentals and library borrowings, but we have yet to provide even that level of privacy protection for our personal and sensitive health care data.

Now is the time to accept the challenge and legislate so that the American people can have some assurance that their medical histories will not be the subject of public curiosity, commercial advantage, or harmful disclosure.

In my examination of the Health Security Act, I was encouraged by the fact that the administration clearly understands that health security must include assurances that personal health information will be kept private, confidential, and secure from unauthorized disclosure. There is no doubt that the increased computerization of medical information has raised the stakes in privacy protection.

The American public cares deeply about protecting their privacy. This has been demonstrated, again, most recently in the American Civil Liberties Union Foundation's Benchmark Survey on Privacy entitled "Live and Let Live" wherein three out of four people expressed particular concern about computerized medical records held in

data bases used without the individual's consent. As policymakers, we must remember that the right to privacy is one of our most cherished freedoms—it is the right to be left alone and to choose what we will reveal of ourselves and what we will keep from others.

The administration's health care reform proposal provides that privacy and security guidelines will be required for health data cards and computerized medical records. In this regard, the President is to be commended. The difficulties I had with the provisions of Health Security Act, as originally introduced, is that it delayed recommendations to Congress for consideration of comprehensive privacy legislation for 3 years and did not include a criminal penalty for unauthorized disclosure of someone's medical records.

The bill we introduce today, the Health Care Privacy Protection Act seeks to provide a comprehensive framework for protecting the privacy of our medical records from the outset.

This bill adds a number of important components necessary for health care reform legislation. It establishes in law the principle that a person's health information is to be protected and to be kept confidential. It creates both criminal and civil remedies for invasions of privacy for a person's health care information.

The bill creates a set of rules and norms to govern the disclosure of personal health information and narrows the sharing of personal details within the health care system to the minimum necessary to provide care, allow for payment, and to facilitate effective oversight. Special attention is paid to emergency medical situations, public health requirements, and research.

Further, this legislation would provide patients with a comprehensive set of rights of inspection and an opportunity to correct their own records, as well as information accounting for disclosures of those records.

I want to commend Representative CONDIT, who chairs the House Subcommittee on Information, Justice, Transportation and Agriculture of the House Committee on Government Operations, for the leadership he is showing in this area. I have followed with interest the hearings he has recently held and companion legislation that he and Representative VELÁZQUEZ introduced in the House. It is my hope and intention that introduction of the Health Care Privacy Protection Act moves us closer to our shared goal of enacting effective privacy protection for medical records.

We have tried to simplify, clarify, and strengthen the privacy protection provisions currently under discussion. We have also sought to accommodate legitimate oversight concerns so that we do not create unnecessary impediments to health care fraud investigations. Effective health care oversight is

essential if a reformed health care system is to function and fulfill its intended goals. Otherwise, we risk establishing a publicly sanctioned playground for the unscrupulous. Too much is being invested in health care reform to allow the resulting system to be the subject of undetected fraud or abuse.

We look forward to working with our colleagues both here in the Senate and in the House as we refine this legislation. As Senator KENNEDY prepared to mark up a Labor Committee bill, I have been consulting with him to ensure that privacy protection be included in that bill. I thank him and his able staff for the opportunity to work with them on this important issue and commend them for including health care privacy protections in the Labor Committee markup and for their longstanding commitment to personal privacy. I look forward to consulting with Senator MOYNIHAN, as well, as the Finance Committee prepares for its markup and know of his strong resolve in this regard. With the help of Senators RIEGLE and WOFFORD, who have each shown sensitivity and leadership in this effort, we hope to provide a consensus on these important issues.

I want to thank all of those who have been working with us on the issue of health information privacy and, in particular, wish to commend the Vermont Health Information Consortium, the American Hospital Association, the American Medical Association, the American Health Information Management Association, IBM, Equifax, the Working Group on Electronic Data Interchange, the Electronic Frontier Foundation, the American Civil Liberties Union, and the Department of Health and Human Services for their tireless efforts in working to achieve a significant consensus on this important component of health care reform.

With continuing support from the administration, health care providers, and privacy advocates we can enact provisions to protect the privacy of the medical records of the American people in a reformed health care treatment and payment system in which health care security becomes a reality for all Americans.

By Mr. ROCKEFELLER (by request):

S. 2131. A bill to authorize additional major medical facility construction projects for fiscal year 1994, at the Department of Veterans Affairs Medical Center Sepulveda, CA, and to waive the notice and wait requirement for an administrative reorganization at that facility; to the Committee on Veterans Affairs.

SEPULVEDA, CA, CONSTRUCTION PROJECT  
AUTHORIZATION ACT OF 1994

• Mr. ROCKEFELLER. Mr. President, as chairman of the Committee on Veterans' Affairs, I have today introduced, at the request of the Secretary of Vet-

erans Affairs, S. 2131, a bill to authorize additional major medical facility construction projects for fiscal year 1994 at the Department of Veterans Affairs Medical Center, Sepulveda, CA, and to waive the congressional waiting period requirement for an administrative reorganization at that facility. The Secretary of Veterans Affairs submitted this legislation to the President of the Senate by letter dated April 13, 1994.

My introduction of this measure is in keeping with the policy which I have adopted of generally introducing—so that there will be specific bills to which my colleagues and others may direct their attention and comments—all administration-proposed draft legislation referred to the Committee on Veterans' Affairs. Thus, I reserve the right to support or oppose the provisions of, as well as any amendment to, this legislation.

Mr. President, I ask unanimous consent that the text of the bill and additional material be printed in the RECORD.

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

S. 2131

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

SECTION 1. AUTHORIZATION OF CONSTRUCTION PROJECTS.

The Secretary of Veterans Affairs may carry out the following major medical facility projects for which funds were appropriated in Public Law 103-211 in the amounts specified:

(1) Construction of a new ambulatory care/support services facility at the Department of Veterans Affairs Medical Center in Sepulveda, California, \$53,700,000.

(2) Other major medical facility projects required to repair, restore, or replace earthquake damaged facilities at the Department of Veterans Affairs Medical Center in Sepulveda, California, \$50,000,000.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated for the Department of Veterans Affairs for fiscal year 1994, \$103,700,000 for the major medical facility projects authorized by section 1.

(b) LIMITATION.—The projects authorized in subsection (a) may only be carried out using the following funds:

(1) Funds appropriated for the Construction, major projects account of the Department of Veterans Affairs by chapter 7 of title I of Public Law 103-211 and available for obligation for major construction projects.

(2) Funds appropriated for the Construction, major projects account of the Department of Veterans Affairs for a fiscal year before year 1994 that remain available for obligation.

(3) Funds appropriated for the Construction, major projects account of the Department of Veterans Affairs for fiscal year 1994 for a category of activity not specific to a project.

(4) Funds in an amount not to exceed \$10,600,000 out of the funds appropriated to the Medical Care account of the Department of Veterans Affairs by chapter 7 of title I of Public Law 103-211 that are transferred to

the Construction, major projects account of the Department by an appropriations Act enacted after the date of the enactment of this Act.

SEC. 3. AUTHORITY OF SECRETARY OF VETERANS AFFAIRS TO CARRY OUT SPECIFIED ADMINISTRATIVE REORGANIZATION.

(a) AUTHORITY FOR ADMINISTRATIVE REORGANIZATION.—The Secretary of Veterans Affairs may carry out the administrative reorganization described in subsection (b) without regard to section 510(b) of title 38, United States Code.

(b) SPECIFIED REORGANIZATION.—Subsection (a) applies to a reorganization at the Department of Veterans Affairs Medical Center in Sepulveda, California, necessitated by the January 1994 earthquake damage at that location as such reorganization was described in the detailed plan and justification submitted by the Secretary of Veterans Affairs in April, 1994, letters to the Chairmen of the Committees on Veterans' Affairs of the Senate and the House of Representatives.

THE SECRETARY OF  
VETERANS AFFAIRS,  
Washington, DC, April 13, 1994.

Hon. AL GORE,

*President of the Senate,  
The Capitol, Washington, DC.*

DEAR MR. PRESIDENT: We are transmitting a draft bill, "To authorize additional major medical facility construction projects for Fiscal year 1994, at the Department of Veterans Affairs Medical Center Sepulveda, California, and to waive the Congressional waiting period requirement for an administrative reorganization at such facility." I request that this bill be referred to the appropriate committee and promptly enacted.

This measure would authorize specific funding for the construction phase of a new ambulatory care/support services facility at the Department of Veterans Affairs (VA) Medical Center Sepulveda, California, as well as other major medical facility projects for extensive repairs and renovations at that facility. Further, since the proposed replacement of the Sepulveda hospital, with a new ambulatory care facility at Sepulveda, is a change which constitutes an administrative reorganization subject to the Congressional notice and waiting period requirements of Section 510(b) of title 38, United States Code, this measure would waive the waiting period requirement in order to expedite this project.

The January 1994 Southern California earthquake caused enormous physical damage, leaving tens of thousands homeless, closing major highways, demolishing schools and closing down utilities. The VA's Sepulveda Medical Center was not spared. It sustained extensive structural damage which required the transfer of more than 300 hospital and nursing home patients to other VA facilities in the Los Angeles area on the day of the earthquake.

Responding to the situation necessitated a reexamination of the medical needs of veterans in the earthquake damaged area and of the most effective manner in which VA could best meet those needs. For example, even after the transfer of the Sepulveda Medical Center patients, the West Los Angeles VA Medical Center still had more than 170 inpatient beds available. Furthermore, future (year 2005) hospital bed projections indicate a need for approximately 600 fewer VA hospital beds than the current operating capacity in the Los Angeles area.

In addition, VA's health care delivery system in the Los Angeles area must be properly positioned for future competitiveness

under health care reform. VA intends to improve the efficiency of its health care delivery system in order to be more competitive and to continue to move toward a managed care system with a primary care focus. Under a managed care system, there will be incentives to promote alternatives to hospitalization and to avoid hospital admissions whenever possible. Accordingly, VA has determined that veterans' medical care needs will be best served by retaining and enhancing ambulatory care and nursing home programs at VA's Sepulveda Medical Center and by permanently shifting the hospital programs to the West Los Angeles VA Medical Center.

Congress, through the enactment of a supplemental emergency appropriation, provided VA the initial funding necessary to accomplish these objectives. On February 12, 1994, Congress enacted the Emergency Supplemental Appropriations Act of 1994 (Public Law 103-211), which appropriated \$21,000,000 to the VA's Medical Care account to provide health care to veterans affected by the earthquake. In addition, \$45,600,000 was appropriated to VA's Construction, Major Projects account to repair and renovate buildings as well as to restore electrical and water services at the VA Medical Centers in Sepulveda and West Los Angeles. In addition, since only preliminary damage estimates were available when these supplemental appropriations were considered, Congress included a contingency fund of \$550,000,000 in the Unanticipated Needs account of the Act.

The contingency fund appropriation was made available for transfer at the discretion of the President to various agencies to meet disaster needs. In a letter to the Speaker of the House of Representatives dated March 18, 1994 (copy enclosed), the President stated that \$47,500,000 from the contingency fund would be transferred to the VA's Construction, Major Projects account for constructing a state-of-the-art ambulatory care facility to replace the damaged Sepulveda hospital. This request reflected a reestimate of the additional Medical Care costs incurred as a result of the earthquake that was \$10,600,000 less than originally assumed. The Department proposes to transfer to the Construction, Major Projects account up to \$10,600,000 of the \$21,000,000 appropriated to the Medical Care account to complete all major medical facility projects at the Sepulveda Medical Center.

Despite the Congressional appropriation and Presidential transfer of funds to the Construction, Major Projects account, VA currently is barred by statute from obligating these funds for the purposes appropriated. Section 8104(a)(2) of title 38, United States Code, prohibits VA officials from obligating any funds appropriated for any major medical facility project (defined as a project for the construction or alteration of a medical facility involving a total expenditure of more than \$3,000,000) unless funds for such project have been specifically authorized by law. Therefore, this draft bill would specifically authorize VA to obligate the \$45,600,000 appropriated by the Congress and the \$47,500,000 transferred by the President, as well as any transfer to the Construction, Major Projects account of up to \$10,600,000 in Medical Care funds appropriated by the Emergency Supplemental Appropriations Act of 1994.

Further, section 510(b) of title 38, United States Code, precludes any action, including the obligation of funds, to carry out a reorganization at the Sepulveda Medical Center

prior to complying with the Congressional notice and waiting period requirements of that section. Since the construction of an ambulatory care facility at Sepulveda Medical Center in lieu of replacing the damaged Sepulveda hospital would be delayed for a minimum of 90 days of continuous session of Congress while VA complies with the Congressional waiting period requirement, the draft bill would waive the waiting period requirement and expedite the proposed project.

The Omnibus Budget Reconciliation Act of 1990 requires that all revenue and direct spending legislation meet a pay-as-you-go requirement. That is, no such bill should result in an increase in the deficit and, if it does, it must trigger a sequester if it is not fully offset. The funds provided by the Emergency Supplemental Appropriations Act of 1994 were 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, as amended, and the President, in his March 18, 1994, request designated the amount of funds made available from the Unanticipated Needs account as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. Accordingly, this legislative proposal would not score under the pay-as-you-go provisions of the Budget Enforcement Act.

The Office of Management and Budget advises that there is no objection to the submission of this legislative proposal to the Congress and that its enactment would be in accord with the program of the President.

Sincerely yours,

JESSE BROWN.

THE WHITE HOUSE,

Washington, DC, March 18, 1994.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: In accordance with provisions of P.L. 103-211, the Emergency Supplemental Appropriations Act of 1994, I am transmitting a request to make available appropriations totaling \$103,000,000 in budget authority for the Departments of Commerce, Housing and Urban Development, the Interior, Labor, Transportation, and Veterans Affairs, and the Corporation for National Community Service. The funds to be made available will be transferred from the Unanticipated needs account within Funds Appropriated to the President to support emergency requirements arising from the consequences of the January 17th earthquake in Southern California and the Midwest floods of 1993. As provided in P.L. 103-211, the funds will be available 15 days from the date of this transmittal.

In addition, in accordance with provisions of P.L. 102-368, the Dire Emergency Supplemental Appropriations Act of 1992, I hereby make available appropriations of \$75,000,000 in budget authority for the Small Business Administration. These funds will provide \$326 million in additional disaster loans to victims of the January 17th earthquake in Southern California and will be available immediately.

I designate the amounts made available as emergency requirements pursuant to section 251(D)(2)(D)(i) of the Balanced Budget and Emergency deficit Control Act of 1985, as amended.

The details of these actions are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Sincerely,

WILLIAM J. CLINTON.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, March 18, 1994.

The President,  
The White House.

Submitted for your consideration are requests to make available emergency appropriations totaling \$429 million in budgetary resources for the Departments of Commerce, Housing and Urban Development, the Interior, Labor, Transportation, and Veterans Affairs, the Small Business Administration (SBA), and the Corporation for National and Community Service. Your approval of these requests would make available previously appropriated funds to these agencies to enable them to address needs arising from the consequences of the January 17th earthquake in Southern California and the Midwest floods of 1993.

P.L. 103-211, the Emergency Supplemental Appropriations Act of 1994, provided \$550 million for the Unanticipated needs account within Funds Appropriated to the President that may be transferred to any authorized Federal governmental activity to meet requirements of disasters. The availability of these funds was made contingent upon the President submitting a budget request to the Congress and designating the entire amount requested as an emergency requirement. At this time, \$103 million is required to support urgent needs arising from recent disasters. As provided in P.L. 103-211, the funds would be available 15 days after the submission of your request to the Congress. As described in the enclosure, the requests include: \$90.8 million in continued emergency support for victims of the January 17th earthquake in Southern California; \$12.2 million for the Department of the Interior to support additional needs arising from the Midwest floods of 1993.

Public Law 102-368, the Dire Emergency Supplemental Appropriations Act of 1992, provided \$331.8 million in budget authority to SBA for the cost of direct loans. Of this amount, \$256.8 million was made immediately, and the availability of \$75 million was made contingent upon the President submitting a budget request to the Congress and designating the entire amount of the request as an emergency requirement. This \$75 million in budget authority, which will support additional disaster lending of \$326 million to victims of the Southern California earthquake, is now required. Forwarding this request to the Congress will make the funds available to SBA immediately.

I recommend that you designate these requests as emergency funding requirements in accordance with applicable provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

I have carefully reviewed these proposals and am satisfied that they are necessary at this time. Therefore, I join the heads of the affected departments and agencies in recommending that you approve these requests by signing the enclosed letter to the Speaker of the House of Representatives. This action would make the \$75 million in SBA funds available immediately. No further congressional action will be required on the \$103 million from the Unanticipated needs account; however, P.L. 103-211 provides Congress with 15 days to review your proposed allocation of the funds before the funds can be released.

Sincerely,

LEON E. PANETTA,

Director.

**EMERGENCY APPROPRIATIONS: AMOUNTS PREVIOUSLY APPROPRIATED MADE AVAILABLE BY THE PRESIDENT**

Funds appropriated to the President:  
Unanticipated needs—\$103,000,000.

Public Law 103-211, the Emergency Supplemental Appropriations Act of 1994, which was enacted into law on February 12, 1994, provided \$550 million in contingent emergency funding for the Unanticipated needs account within Funds Appropriated to the President. These funds were made available contingent upon the President submitting a budget request to the Congress and designating the entire amount requested at an emergency requirement.

The Act further provides that the funds may be transferred to any authorized Federal governmental activity to meet the requirements of disasters. At this time, \$103 million is required to support needs arising from the consequences of the January 17th earthquake in Southern California and the Midwest floods of 1993 and will be transferred to the following programs, projects, and activities in the amounts specified.

Department of Commerce, Economic Development Administration: Economic development assistance programs—\$8,000,000.

These economic development assistance program funds will: (1) support technical assistance grants to municipal governments for long-term, post-earthquake economic recovery planning, including financial management activities; and (2) assist minority businesses in Southern California in recovering from the impact of the January 17th earthquake.

Department of Housing and Urban Development Housing Programs: Annual contributions for assisted housing—\$1,000,000.

This \$1 million will enable the Department to help families locate housing in areas affected by the January 17th earthquake. These search funds are needed due to the limited availability of affordable housing, particularly for large families.

Policy Development and Research: Research and technology—\$1,500,000.

These funds will enable the Department to conduct urgent studies of housing issues related to the Southern California earthquake, including minimizing residential damage and monitoring and redirecting Federal emergency housing response.

Department of the Interior, Geological Survey: survey, investigations, and research—\$1,800,000.

This \$1.8 million will support the activities of the interagency Scientific and Assessment Team (SAST). Arising from the consequences of the Midwest floods of 1993, the SAST is due to deliver a floodplain study on May 30, 1994.

Fish and Wildlife Service: Resource management—\$600,000.

These funds will be used to create computerized wetlands maps of the Midwest areas flooded in 1993.

Construction—\$400,000.

These construction funds will be used to repair Fish and Wildlife Service facilities damaged in the Midwest floods of 1993.

Land acquisition—\$3,900,000.

These funds will allow the Department to acquire environmentally valuable wetlands in the Midwest. In the absence of this proposal, the lands would revert to agricultural production, which would be subject to repeated flooding and associated crop losses.

National Park Service: Historic preservation fund—\$5,500,000.

This \$5.5 million will be used to repair levee damage in St. Genevieve, Missouri, caused by the flooding of 1993.

Department of Labor, Employment and Training Administration: Training and employment services—\$28,000,000.

These funds will finance temporary jobs for dislocated workers to support cleanup, repair, and reconstruction of property damaged by the January 17th earthquake in Southern California.

Department of Transportation, Federal Aviation Administration: Facilities and equipment—\$2,000,000.

These funds will be used to repair air traffic control and other facilities in Southern California damaged by the January 17th earthquake.

Department of Veterans Affairs, Construction: Construction, major projects—\$47,500,000.

These funds are needed to construct a state-of-the-art ambulatory care/research facility to replace the hospital damaged at the Sepulveda California Medical Center by the January 17th earthquake.

Corporation for National and Community Service: National service initiative—\$2,800,000.

This \$2.8 million will enable the Corporation to expand and coordinate service programs in Southern California areas affected by the January 17th earthquake.

Small Business Administration: Disaster loans program account—\$75,000,000.

Public Law 102-368, the Dire Emergency Supplemental Appropriations Act of 1992, which was enacted into law on September 23, 1992, provided \$331.8 million in budget authority to the Small Business Administration for the cost of direct loans. Of this amount, \$256.8 million was made available immediately, and \$75 million was made available contingent upon the President submitting a budget request to the Congress and designating the entire amount of the request as an emergency requirement. This \$75 million in budget authority is now required and will support \$326 million in additional disaster lending to victims of the Southern California earthquake.\*

By Mr. EXON:

S. 2132. A bill to authorize appropriations to carry out the Federal Railroad Safety Act of 1970, and for other purposes; to the Committee on Commerce, Science, and Transportation.

**FEDERAL RAILROAD SAFETY AUTHORIZATION ACT OF 1994**

Mr. EXON. Mr. President, as chairman of the Senate Surface Transportation Subcommittee, I am pleased and honored to introduce the Federal Railroad Safety Act of 1994 by the request of the Clinton administration. My highest priority as a member and chairman of the subcommittee has been safety.

This Monday, the Nation arose to news of an unfortunate accident in North Carolina. As safe as rail transportation has become, this incident reminds us all that more needs to be done. My thoughts and prayers go out to the family of the engineer who lost his life and the passengers and crew who were injured in the accident. The good people of Smithfield, NC, the passengers and crew of the Silver Meteor showed great courage, compassion, and composure in coping with a difficult ordeal. I assure my colleagues and the passengers of the Silver Meteor that

this accident will be carefully investigated by the Surface Transportation Subcommittee. If there is a gap in the Federal regulatory structure, especially as it relates to securing cargo, it will be closed.

Rail transportation remains by far one of the safest modes of transportation. It is impossible to anticipate every possible circumstance that confronts any mode of transportation. While every accident is different, we can study each one to find ways to reduce risk. In general, the railroads and State and Federal Government have done a good job. The overall trend for rail accidents is down.

On occasion, the Congress has had to nudge the Federal Rail Administration into action. I am pleased to report that the current Rail Administrator needs very little encouragement. Jolene Molitoris has revitalized the FRA and has brought a much-needed energy and enthusiasm to the work of the agency. The seriousness in which the Administrator has taken her responsibilities with regard to mandated rulemakings is most appreciated.

The administration's bill is a basic reauthorization with authority to conduct, with the cooperation of labor and management, a pilot project on hours of service.

This legislation is a very good start. I will, of course, have some ideas of my own to add to this bill. In addition to addressing any issues which may arise from the Silver Meteor crash, I would like to enhance this legislation with a meaningful grade crossing safety initiative. I have discussed this matter with members of the Clinton administration and applaud the Secretary of Transportation for his ambitious review of grade crossing safety measures.

We need to take advantage of improved technologies to advance safety where the rails meet the roads. States must be encouraged to close or upgrade crossings, drivers and children need to be educated as to the dangers of crossings and held responsible for violating the law at crossings, and new priorities must be created to assure that the most dangerous crossings receive immediate attention.

Mr. President, I look forward to working with all interested parties to continue the good work which has been done in rail safety and to make America's railroads even safer. I ask unanimous consent that this bill be printed in the RECORD.

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

S. 2132

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Federal Railroad Safety Authorization Act of 1994".

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**  
Section 214(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 444(a)) is amended by

striking the first sentence and inserting in lieu thereof the following: "There are authorized to be appropriated to carry out this Act not to exceed \$68,289,000 for fiscal year 1995 and such sums as may be necessary for fiscal years 1996, 1997 and 1998.

#### SEC. 7. HOURS OF SERVICE PILOT PROJECT.

(a) IN GENERAL.—The Hours of Service Act (45 U.S.C. 61 et seq.) is amended by adding at the end the following new section;

#### "SEC. 7. HOURS OF SERVICE PILOT PROJECT.

"(a) A railroad or railroads, and all labor organizations representing any directly affected covered service employees of the railroad or railroads, may jointly petition the Secretary of Transportation for approval of one or more pilot projects to demonstrate the possible benefits of implementing alternatives to the requirements of this Act, including, but not limited to, those concerning maximum on-duty and minimum off-duty periods. Based on such a joint petition, the Secretary, after notice and opportunity for comment, may waive, in whole or in part, compliance with this Act for a period of no more than 2 years, if the Secretary determines that such waiver of compliance is in the public interest and is consistent with railroad safety. Any such waiver may, based on a new petition, be extended for additional periods of up to 2 years, after notice and opportunity for comment. An explanation of any waiver granted under this section shall be published in the Federal Register.

"(b) The Secretary shall submit to Congress no later than June 1, 1996, a report that explains and analyzes the effectiveness of any pilot projects approved under this section."

(b) CIVIL PENALTY.—The first sentence of section 5(a)(1) of the Hours of Service Act (45 U.S.C. 64a(a)(1)) is amended by inserting immediately before "shall be liable" the following: "or that violates any provision of a waiver applicable to that person that has been granted under section 7 of this Act."

#### SEC. 4. TECHNICAL AMENDMENT TO FEDERAL RAILROAD SAFETY ACT OF 1970.

The first sentence of section 209(f) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 438(f)) is amended by inserting "any of the Federal railroad safety laws, as defined in section 212(e) of this title (except for the Hazardous Materials Transportation Act), or" immediately after "individual's violation of".

#### SEC. 5. BIENNIAL REPORTING ON IMPLEMENTATION OF FEDERAL RAILROAD SAFETY ACT OF 1970.

(a) IN GENERAL.—Section 211(a) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440(a)) is amended—

(1) in the first sentence, by striking "on or before July 1 of each year a comprehensive report on the administration of this title for the preceding calendar year" and inserting in lieu thereof "every 2 years, on or before July 1 of the year due, a comprehensive report on the administration of this title for the preceding 2 calendar years";

(2) in paragraph (1), by striking "occurring in such year" and inserting in lieu thereof "occurring during each of the 2 preceding calendar years, by calendar year";

(3) in paragraphs (2), (3), and (6), respectively, by striking "year" and inserting in lieu thereof "years"; and

(4) in paragraphs (9) and (10), by striking "during the preceding calendar year" each place it appears and inserting in lieu thereof "during the preceding 2 calendar years".

(b) CONFORMING AMENDMENT.—The section heading for section 211 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 440) is

amended by striking "ANNUAL REPORT" and inserting in lieu thereof "BIENNIAL REPORT".

By Mr. KOHL (for himself, Mr. THURMOND, Mr. BIDEN, Mr. METZENBAUM, Mr. GRASSLEY, Mr. HEFLIN, Mr. BROWN, Mr. DECONCINI, Mr. D'AMATO, Mr. BOND, Mr. HOLLINGS, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. ROBB, Mr. SARBANES, Mr. WOFFORD, Mr. LEVIN, Mr. LAUTENBERG, Mr. CHAFEE, Mr. AKAKA, Mr. FEINGOLD, Mr. NUNN, and Mr. COCHRAN):

S.J. Res. 192. A joint resolution to designate October 1994 as "Crime Prevention Month"; to the Committee on the Judiciary.

#### NATIONAL CRIME PREVENTION MONTH

• Mr. KOHL. Mr. President, I rise today to introduce a measure that declares October 1994 to be National Crime Prevention Month. The purpose of this bill is to encourage Americans to join in the fight against crime.

We all know that too many Americans live their lives in fear. We know of the tragic statistics that have caused us to question what kind of society we have become. Day after day we are reminded of how crime—and especially juvenile crime—has twisted the American dream.

Well, Mr. President, the time has come for us to stop lamenting this fact and start taking bold steps to make our streets and neighborhoods safe. And we need to encourage preventative measures that stop crime before it happens.

Crime Prevention Month does this by celebrating community partnerships and encouraging individuals, families and neighbors to come together in the fight against crime. Last year, during Crime Prevention Month, over 27 million Americans participated in crime prevention activities, established community watch groups, and took part in self-protection courses. Together, through involvement in these kinds of activities, we can stop crime before it occurs.●

#### ADDITIONAL COSPONSORS

S. 987

At the request of Mr. DASCHLE, the name of the Senator from South Carolina [Mr. HOLLINGS] was added as a cosponsor of S. 987, a bill to amend the Internal Revenue Code of 1986 with respect to discharge of indebtedness income from prepayment of loans under section 306B of the Rural Electrification Act of 1936.

S. 1063

At the request of Mr. HATCH, the name of the Senator from Tennessee [Mr. SASSER] was added as a cosponsor of S. 1063, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

S. 1406

At the request of Mr. KERREY, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1406, a bill to amend the Plant Variety Protection Act to make such act consistent with the International Convention for the Protection of New Varieties of Plants of March 19, 1991, to which the United States is a signatory, and for other purposes.

S. 1478

At the request of Mr. PRYOR, the name of the Senator from Georgia [Mr. NUNN] was added as a cosponsor of S. 1478, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to ensure that pesticide tolerances adequately safeguard the health of infants and children, and for other purposes.

S. 1521

At the request of Mr. GORTON, the name of the Senator from Kentucky [Mr. MCCONNELL] was added as a cosponsor of S. 1521, a bill to reauthorize and amend the Endangered Species Act of 1973 to improve and protect the integrity of the programs of such act for the conservation of threatened and endangered species, to ensure balanced consideration of all impacts of decisions implementing such act, to provide for equitable treatment of non-Federal persons and Federal agencies under such act, to encourage non-Federal persons to contribute voluntarily to species conservation, and for other purposes.

S. 1592

At the request of Mr. DORGAN, the name of the Senator from Utah [Mr. BENNETT] was added as a cosponsor of S. 1592, a bill to improve Federal decisionmaking by requiring a thorough evaluation of the economic impact of Federal legislative and regulatory requirements on State and local governments and the economic resources located in such State and local governments.

S. 1727

At the request of Mr. COHEN, the names of the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Vermont [Mr. LEAHY], the Senator from Michigan [Mr. LEVIN], and the Senator from Connecticut [Mr. DODD] were added as cosponsors of S. 1727, a bill to establish a National Maritime Heritage Program to make grants available for educational programs and the restoration of America's cultural resources for the purpose of preserving America's endangered maritime heritage.

S. 1815

At the request of Mr. SIMPSON, his name was withdrawn as a cosponsor of S. 1815, a bill to authorize matching funds for State and local firearm buy-back programs.

S. 1836

At the request of Mr. HELMS, his name was added as a cosponsor of S. 1836, a bill for the relief of John Mitchell.

S. 1887

At the request of Mr. BAUCUS, the names of the Senator from Kentucky [Mr. FORD], the Senator from Maryland [Mr. SARBANES], the Senator from Montana [Mr. BURNS], and the Senator from Iowa [Mr. GRASSLEY] were added as cosponsors of S. 1887, a bill to amend title 23, United States Code, to provide for the designation of the National Highway System, and for other purposes.

S. 1889

At the request of Mr. CHAFEE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 1889, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.

S. 1915

At the request of Mr. NICKLES, the name of the Senator from Tennessee [Mr. MATHEWS] was added as a cosponsor of S. 1915, a bill to require certain Federal agencies to protect the rights of private property owners.

S. 1924

At the request of Mr. HATCH, the name of the Senator from Tennessee [Mr. MATHEWS] was added as a cosponsor of S. 1924, a bill to amend the Internal Revenue Code of 1986 to provide clarification for the deductibility of expenses incurred by a taxpayer in connection with the business use of the home.

S. 1933

At the request of Mr. MCCAIN, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 1933, a bill to repeal the Medicare and Medicaid Coverage Data Bank, and for other purposes.

S. 2030

At the request of Mr. PRESSLER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 2030, a bill to amend the Internal Revenue Code of 1986 to limit the tax rate for certain small businesses, and for other purposes.

S. 2094

At the request of Mr. DASCHLE, the name of the Senator from Kansas [Mrs. KASSEBAUM] was added as a cosponsor of S. 2094, a bill to make permanent the authority of the Secretary of Veterans Affairs to approve basic educational assistance for flight training.

S. 2112

At the request of Mrs. FEINSTEIN, the names of the Senator from New Hampshire [Mr. SMITH] and the Senator from Colorado [Mr. CAMPBELL] were added as cosponsors of S. 2112, a bill to amend the Defense Base Closure and Realignment Act of 1990 to postpone until 1997 the base closure process otherwise scheduled to commence in 1995.

SENATE JOINT RESOLUTION 175

At the request of Mr. MCCAIN, the names of the Senator from Hawaii [Mr.

INOUYE], the Senator from Michigan [Mr. LEVIN], the Senator from Minnesota [Mr. WELLSTONE], the Senator from Oklahoma [Mr. BOREN], the Senator from Illinois [Mr. SIMON], the Senator from Nevada [Mr. REID], the Senator from New Mexico [Mr. DOMENICI], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Ohio [Mr. GLENN], the Senator from New York [Mr. D'AMATO], the Senator from Oregon [Mr. PACKWOOD], the Senator from Louisiana [Mr. JOHNSTON], the Senator from South Carolina [Mr. THURMOND], the Senator from Utah [Mr. HATCH], the Senator from Virginia [Mr. WARNER], the Senator from Alabama [Mr. SHELBY], the Senator from Arizona [Mr. DECONCINI], the Senator from Florida [Mr. GRAHAM], the Senator from Ohio [Mr. METZENBAUM], the Senator from California [Mrs. FEINSTEIN], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of Senate Joint Resolution 175, a joint resolution to designate the week beginning June 13, 1994, as "National Parkinson Disease Awareness Week."

SENATE JOINT RESOLUTION 176

At the request of Mr. PRYOR, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Iowa [Mr. GRASSLEY], the Senator from Idaho [Mr. CRAIG], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Virginia [Mr. WARNER], the Senator from California [Mrs. BOXER], the Senator from Utah [Mr. HATCH], and the Senator from Wyoming [Mr. WALLOP] were added as cosponsors of Senate Joint Resolution 176, a joint resolution to designate the month of May 1994 as "Older Americans Month."

SENATE JOINT RESOLUTION 182

At the request of Mr. JOHNSTON, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Mississippi [Mr. COCHRAN], and the Senator from New Jersey [Mr. LAUTENBERG] were added as cosponsors of Senate Joint Resolution 182, a joint resolution to designate the year 1995 as "Jazz Centennial Year."

AMENDMENT NO. 1718

At the request of Mr. KENNEDY, his name was added as a cosponsor of amendment No. 1718 proposed to S. 2019, an original bill to reauthorize and amend title XIV of the Public Health Service Act—commonly known as the Safe Drinking Water Act—and for other purposes.

## AMENDMENTS SUBMITTED

SAFE DRINKING WATER ACT  
AMENDMENTS OF 1994

## JOHNSTON AMENDMENT NO. 1720

Mr. JOHNSTON proposed an amendment to the bill (S. 2019) to reauthorize

and amend title XIV of the Public Health Service Act (commonly known as the "Safe Drinking Water Act"), and for other purposes; as follows:

At the appropriate place in the bill, add a new section as follows:

SEC. (a) REQUIREMENT.—Except as provided in subsection (b), in promulgating any proposed or final major regulation relating to human health or the environment, the Administrator of the Environmental Protection Agency shall publish in the Federal Register along with the regulation a clear and concise statement that—

(1) describes and, to the extent practicable, quantifies the risks to human health or the environment to be addressed by the regulation (including, where applicable and practicable, the human health risks to significant subpopulations who are disproportionately exposed or particularly sensitive);

(2) compares the human health or environmental risks to be addressed by the regulation to other risks chosen by the Administrator, including—

(A) at least three other risks regulated by the Environmental Protection Agency or other federal agency; and

(B) at least three other risks that are not directly regulated by the federal government;

(3) estimates—

(A) the costs to the United States Government, state and local governments, and the private sector of implementing and complying with the regulation; and

(B) the benefits of the regulation, including both quantifiable measures of costs and benefits, to the fullest extent that they can be estimated, and qualitative measures that are difficult to quantify; and

(4) contains a certification by the Administrator that:

(A) the analyses performed under subsection (a)(1) through (a)(3) are based on the best reasonably obtainable scientific information;

(B) the regulation is likely to significantly reduce the human health or environmental risks to be addressed;

(C) there is no regulatory alternative that is allowed by the statute under which the regulation is promulgated and that would achieve an equivalent reduction in risk in a more cost-effective manner, along with a brief explanation of why other such regulatory alternatives that were considered by the Administrator were found to be less cost-effective; and

(D) the regulation is likely to produce benefits to human health or the environment that will justify the costs to the United States Government, state and local governments, and the private sector of implementing and complying with the regulation.

(b) SUBSTANTIALLY SIMILAR FINAL REGULATIONS.—If the Administrator determines that a final major regulation is substantially similar to the proposed version of the regulation with respect to each of the matters referred to in subsection (a), the Administrator may publish in the Federal Register a reference to the statement published under subsection (a) for the proposed regulation in lieu of publishing a new statement for the final regulation.

(c) REPORTING.—If the Administrator cannot certify with respect to one or more of the matters addressed in subsection (a)(4), the Administrator shall identify those matters for which certification cannot be made, and shall include a statement of the reasons therefor in the Federal Register along with the regulation. Not later than March 1 of

each year, the Administrator shall submit a report to Congress identifying those major regulations promulgated during the previous calendar year for which complete certification was not made, and summarizing the reasons therefor.

(d) OTHER REQUIREMENTS.—Nothing in this section affects any other provision of federal law, or changes the factors that the Administrator is authorized to consider in promulgating a regulation pursuant to any statute, or shall delay any action required to meet a deadline imposed by statute or a court.

(e) JUDICIAL REVIEW.—Nothing in this section creates any right to judicial or administrative review, nor creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. If a major regulation is subject to judicial or administrative review under any other provision of law, the adequacy of the certification prepared pursuant to this section, and any alleged failure to comply with this section, may not be used as grounds for affecting or invalidating such major regulation, although the statements and information prepared pursuant to this section, including statements contained in the certification, may be considered as part of the record for judicial or administrative review conducted under such other provision of law.

(f) DEFINITION OF MAJOR REGULATION.—For purposes of this section, "major regulation" means a regulation that the Administrator determines may have an effect on the economy of \$100,000,000 or more in any one year.

(g) EFFECTIVE DATE.—This section shall take effect 180 days after the date of enactment of this Act.

#### WALLOP AMENDMENT NO. 1721

(Ordered to lie on the table.)

Mr. WALLOP submitted an amendment intended to be proposed by him to the bill S. 2019, supra; as follows:

On page 139, strike lines 2 through 6 and insert the following:

that the State determines are appropriate or applicable in the State;"

On page 143, after line 23, insert the following new subsection:

(1) APPLICABILITY OF PRIMARY DRINKING WATER REGULATIONS.—Section 1411 (42 U.S.C. 300G) is amended by inserting "to the extent that the State determines that the regulations are appropriate or applicable" after "in each State".

#### JOHNSTON AMENDMENT NO. 1722

Mr. JOHNSTON proposed an amendment to the bill S. 2019, supra; as follows:

At the appropriate place in the bill, add the following, numbered accordingly:

SEC. . AMENDMENTS TO THE OUTER CONTINENTAL SHELF LANDS ACT.—The Outer Continental Shelf Lands Act, as amended, is amended by redesignating section 8(a)(3) (43 U.S.C. 1337(a)(3)) as section 8(a)(3)(A) and by adding at the end thereof the following:

"(B) The Secretary may, in order to promote development and new production on a producing or non-producing lease, through primary, secondary, or tertiary recovery means, or to encourage production of marginal or uneconomic resources on a producing or non-producing lease, reduce or suspend any royalty or net profit share set forth in the lease.

"(C)(i) Notwithstanding the provisions of this Act other than this subparagraph, no royalty payment shall be due on new production, as defined in clause (iii) of this subparagraph, from any lease located in water depths of 200 meters or greater in the Western and Central Planning Areas of the Gulf of Mexico, and the Eastern Planning Area of the Gulf of Mexico west of the lateral seaward boundary between the States of Florida and Alabama, or for any lease in the frontier areas of Alaska, which shall, at a minimum, include those areas with seasonal sea ice, long distances to existing pipelines and ports, or a lack of production infrastructure, until the capital costs directly related to such new production have been recovered by the lessee out of the proceeds from such new production.

"(ii) With respect to any lease in existence on the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act meeting the requirements of this subparagraph, upon application by the lessee, the Secretary shall determine within ninety days of such application whether new production from such lease would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph. In making such determination, the Secretary shall consider all costs associated with obtaining, exploring, developing, and producing from the lease. The lessee shall be afforded an opportunity to provide information to the Secretary prior to such determination. Such application may be made on the basis of an individual lease or unit (as defined under the provisions of 30 CFR part 250). If the Secretary determines that such new production would be economic in the absence of the relief from the requirement to pay royalties provided for by clause (i) of this subparagraph, the provisions of clause (i) of this subparagraph shall not apply to such production. Redetermination of the applicability of clause (i) shall be undertaken by the Secretary when requested by the lessee upon significant change in the factors upon which the original determination was made. The Secretary shall make such redetermination within sixty days of such application. The Secretary may extend the time period for making any determination under this clause for thirty days if circumstances so warrant. The lessee shall be notified in writing of any determination or redetermination and the reasons for and assumptions used for such determination. In the event that the Secretary fails to make the determination or redetermination upon application by the lessee within the time period, together with any such extension thereof provided for by this clause, the relief from the requirement to pay royalties provided for by clause (i) shall apply to such production.

"(iii) For purposes of this subparagraph, the term—

"(aa) 'capital costs' shall be defined by the Secretary and shall include exploration costs incurred after the acquisition of the lease and development costs directly related to new production. The terms 'exploration' and 'development' shall have the same meaning contained subsection (k) and (l) of section 2 of this Act except the term 'development' shall also include any similar additional development activities which take place after production has been initiated from such lease. Such capital costs shall not include any amounts paid as bonus bids but shall be adjusted to reflect changes in the consumer price index, as defined in section (1)(f)(4) of title 26 of the United States Code; and

"(bb) 'new production' is—

"(I) any production from a lease from which no royalties are due on production, other than test production, prior to the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; or

"(II) any production resulting from lease development activities pursuant to a Development Operations Coordination Document approved by the Secretary after the date of enactment of the Outer Continental Shelf Deep Water Royalty Relief Act; and

"(iv) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for Light Sweet crude oil exceeds \$28.00 per barrel, any production of oil subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rate, and the lessee's gross proceeds from such oil production, less Federal royalties during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

"(v) In any month during which the arithmetic average of the closing prices for the earliest delivery month on the New York Mercantile Exchange for natural gas exceeds \$3.50 per million British thermal units, any production of natural gas subject to relief from the requirement to pay royalties under clause (i) of this subparagraph shall be subject to royalties at the lease stipulated rate, and the lessee's gross proceeds from such natural gas production, less Federal royalties, during such month shall be counted toward the recovery of capital costs under clause (i) of this subparagraph.

"(vi) The prices referred to in clauses (iv) and (v) of this subparagraph shall be changed during any calendar year after 1994 by the percentage if any by which the consumer price index changed during the preceding calendar year, as defined in section (1)(f)(4) of title 26 of the United States Code."

SEC. . REGULATIONS.—The Secretary shall promulgate such rules and regulations as are necessary to implement the provisions of this Act within one hundred and eighty days after the date of enactment of this Act.

SEC. . AREA-WIDE LEASING.—The Secretary shall not implement the system of tract nomination for oil and gas leasing in the Central and Western Planning Areas of the Gulf of Mexico under the Outer Continental Shelf Lands Act, and shall use the existing area-wide system of leasing in such areas.

SEC. . REPORT TO CONGRESS.—(a) The Secretary shall review Federal regulations and policies within the Secretary's jurisdiction which create barriers and disincentives that unnecessarily preclude new production, or result in premature abandonment or suspension of existing production of oil and gas on Federal lands, including the Outer Continental Shelf. Such review, conducted with the participation of all interested parties, shall assess how Federal policies could be modified to reduce compliance costs and improve the cash flow of oil and gas operations on Federal lands. The review shall include administrative compliance, royalty collection, timing of operational and production management requirements, such as permanent plugging and abandonment of wells, and any other requirements which unduly burden natural gas and oil exploration, production and transportation on Federal lands.

(b) The Secretary shall evaluate the impact, if any, of current royalty rates for oil and gas on Federal lands, both onshore and offshore, on the viability of undeveloped

fields by general category, such as production volume, crude quality, water depth, and distance from existing infrastructure. The review shall be based on current industry technology and cost information, and shall assess how a reduction in Federal oil and natural gas royalties would encourage development.

(c) The Secretary shall report to the Committee on Energy and Natural Resources of the United States Senate and to the United States House of Representatives on the review required by this section and actions taken as recommended pursuant to such review, or the reason such actions have not been taken, within ninety days of the date of enactment of this Act.

**BOXER (AND BRADLEY)  
AMENDMENT NO. 1723**

Mrs. BOXER (for herself and Mr. BRADLEY) proposed an amendment to the bill S. 2019, supra; as follows:

On Page 86, line 20, insert after paragraph (B) the following new subsection:

**"(F) WATER WELL PUMPS AND WATER WELL SYSTEM COMPONENT PARTS.—**

(1) The Administrator shall, within one year from the date of enactment, complete a report reviewing data and information on the leaching of lead from water well pumps and water well system component parts (not to include above-ground pipes, pipe fittings and fixtures specified under subsection(e)) that come into contact with drinking water and the adequacy of voluntary consensus standards for protecting the health of persons from the leaching of lead. In conducting a review under this paragraph, the Administrator shall identify the potential health risks to children and other vulnerable subpopulations associated with water well pumps and water well system component parts.

(2) Not later than two years after the date of enactment of this paragraph, if the Administrator determines that a voluntary consensus standard is not effectively protecting the health of persons, then the Administrator shall establish a health-effects based performance standard and testing protocol for the maximum leaching of lead from water well pumps and water well system components parts (not to include above-ground pipes, pipe fittings and fixtures specified under subsection (e)) in water well systems that come into contact with drinking water.

(3) It shall be a violation of this Act to import, manufacture, sell, distribute or install a water well pump or water well system component parts (not to include above-ground pipes, pipe fittings and fixtures specified in subsection (e)) that leach lead above the maximum level identified in the standard established by the Administrator under paragraph (2).

(4) Not later than 180 days after the date of enactment of this subsection, the Administrator shall request information as is reasonably required to assist the Administrator in carrying out the requirements of this subsection."

On page 86, line 21, strike "(f)" and insert "(g)" in lieu thereof.

**JEFFORDS AMENDMENT NO. 1724**

Mr. CHAFEE (for Mr. JEFFORDS) proposed an amendment to amendment No. 1723 proposed by Mrs. BOXER to the bill S. 2019, supra; as follows:

In the subsection (f) proposed to be inserted, strike the quotation marks at the end and insert the following new paragraph:

**"(5) REPORT ON LEAKING OIL FROM SUBMERSIBLE WELL PUMPS.—**

"(A) STUDY.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall complete a study that—

"(i) reviews data and information on the leaking of oil, including nonfood grade oil and food grade oil, and polychlorinated biphenyls from well pumps that come into contact with drinking water in private wells and wells in public water systems; and

"(ii) identifies potential health risks from the leaking oil and polychlorinated biphenyls in wells.

"(B) REPORT.—Not later than 18 months after the date of enactment of this subsection, the Administrator shall publish a report, to be provided to the environmental agency of each State for distribution to the public, that—

"(i) identifies each pump that presents a health risk referred to in subparagraph (A), including the manufacturer and model number of the pump; and

"(ii) provides recommendations on precautions to be taken to avoid the risk, such as the replacement of the pump, cleaning of the well and plumbing system in which the pump is located, and testing of the well after the removal of the pump.

**D'AMATO (AND OTHERS)  
AMENDMENT NO. 1725**

Mr. D'AMATO (for himself, Mr. MOYNIHAN, Mr. JEFFORDS, Mr. LEAHY, Mr. LEVIN, and Mr. CHAFEE) proposed an amendment to the bill S. 2019, supra; as follows:

On page 143, after line 23, add the following new subsection:

(I) ESTROGENIC SUBSTANCES SCREENING PROGRAM.—Section 1442 (42 U.S.C. 300j-1) (as amended by section 11(a)(10)) is further amended by adding at the end the following new subsection:

**"(j) SCREENING PROGRAM.—**

"(1) DEVELOPMENT.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall develop a screening program, using appropriate validated test systems, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.

"(2) IMPLEMENTATION.—Not later than 2 years after the date of enactment of this subsection, after obtaining review of the screening program described in paragraph (1) by the scientific advisory panel established under section 25(d) of the Act of June 25, 1947 (chapter 125), and the Science Advisory Board established by section 8 of the Environmental Research, Development, and Demonstration Act of 1978 (42 U.S.C. 4365), the Administrator shall implement the program.

"(3) SUBSTANCES.—In carrying out the screening program described in paragraph (1), the Administrator shall provide for the testing of all active and inert ingredients used in products described in section 103(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603(e)), and may provide for the testing of any other substance if the Administrator determines that a widespread population may be exposed to the substance.

"(4) EXEMPTION.—Notwithstanding paragraph (3), the Administrator may, by regula-

tion, exempt from the requirements of this subsection a biologic substance or other substance if the Administrator determines that the substance does not have any effect in humans similar to an effect produced by a naturally occurring estrogen.

**"(5) COLLECTION OF INFORMATION.—**

"(A) IN GENERAL.—The Administrator shall issue an order to a person that manufactures a substance for which testing is required under this subsection to conduct testing in accordance with the screening program described in paragraph (1), and submit information obtained from the testing to the Administrator, within a time period that the Administrator determines is sufficient for the generation of the information.

**"(B) FAILURE TO SUBMIT INFORMATION.—**

"(i) SUSPENSION.—If a person referred to in subparagraph (A) fails to submit the information required under such subparagraph within the time period established by the order, the Administrator shall issue a notice of intent to suspend the sale or distribution of the substance by the person. Any suspension proposed under this subparagraph shall become final at the end of the 30-day period beginning on the date that the person receives the notice of intent to suspend, unless during that period a person adversely affected by the notice requests a hearing or the Administrator determines that the person referred to in subparagraph (A) has complied fully with this paragraph.

"(ii) HEARING.—If a person requests a hearing under clause (i), the hearing shall be conducted in accordance with section 554 of title 5, United States Code. The only matter for resolution at the hearing shall be whether the person has failed to submit information required under this paragraph. A decision by the Administrator after completion of a hearing shall be considered to be a final agency action.

"(iii) TERMINATION OF SUSPENSIONS.—The Administrator shall terminate a suspension under this subparagraph issued with respect to a person if the Administrator determines that the person has complied fully with this paragraph.

"(6) AGENCY ACTION.—In the case of any substance that is found to have a potential adverse effect on humans as a result of testing and evaluation under this subsection, the Administrator shall take such action, including appropriate regulatory action by rule or by order under statutory authority available to the Administrator, as is necessary to ensure the protection of public health.

"(7) REPORT TO CONGRESS.—Not later than 4 years after the date of enactment of this subsection, the Administrator shall prepare and submit to Congress a report containing—

"(A) the findings of the Administrator resulting from the screening program described in paragraph (1);

"(B) recommendations for further testing and research needed to evaluate the impact on human health of the substances tested under the screening program; and

"(C) recommendations for any further actions (including any action described in paragraph (6)) that the Administrator determines are appropriate based on the findings."

**ROBB (AND WARNER) AMENDMENT  
NO. 1726**

Mr. ROBB (for himself and Mr. WARNER) proposed an amendment to the bill S. 2019, supra; as follows:

On page 141, between lines 2 and 3, insert the following new subsection:

(g) **HARDSHIP COMMUNITY DEMONSTRATION PROGRAM.**—Section 1444 (42 U.S.C. 300j-3) is amended by adding at the end the following new subsection:

“(e) **HARDSHIP COMMUNITY DEMONSTRATION PROGRAM.**—

“(1) **IN GENERAL.**—The State agency administering a loan fund pursuant to part G in the State of Virginia (referred to in this subsection as the ‘State agency’) may conduct a program in accordance with this subsection to demonstrate alternative approaches to intergovernmental coordination in the financing of drinking water projects in rural communities in southwestern Virginia that are experiencing severe economic hardship.

“(2) **REGIONAL ASSISTANCE FUND.**—

“(A) **ESTABLISHMENT.**—The State agency may establish a regional endowment fund (referred to in this subsection as the ‘regional fund’) to assist in financing projects that are eligible under this subsection.

“(B) **USE OF REGIONAL FUND.**—The State agency shall invest amounts in the regional fund and shall use interest earned on amounts in the regional fund to pay a portion of the non-Federal share of a Federal grant to assist a project that is eligible under this subsection. Interest earned on amounts in the regional fund shall not be considered to be Federal funds.

“(C) **DEPOSITS TO REGIONAL FUND.**—

“(i) **IN GENERAL.**—Notwithstanding any other provision of this title, the State agency may deposit into the regional fund \$2,000,000 from funds made available pursuant to section 1472 for each of fiscal years 1994 through 1997, if there are commitments to deposit into the regional fund a total of not less than 25 percent of that amount from non-Federal sources.

“(ii) **LESSER AMOUNT.**—Notwithstanding clause (i), the State agency may deposit into the regional fund an amount less than \$2,000,000 from funds made available pursuant to section 1472, if the amount deposited is equal to 3 times the amount committed to be deposited into the regional fund from non-Federal sources.

“(3) **ELIGIBLE PROJECTS.**—

“(A) **IN GENERAL.**—Assistance provided under this subsection shall meet the requirements of subsections (a), (b), (c) of section 1473.

“(B) **ELIGIBLE RECIPIENTS.**—Assistance under this subsection shall be available only—

“(i) for a project that serves a disadvantaged community (as defined in section 1473(e)(1)); and

“(ii) to a public water system located, in whole or in part, in Lee County, Wise County, Scott County, Dickenson County, Russell County, Buchanan County, Tazewell County, and the city of Norton, Virginia.

“(e) **ADVISORY GROUP.**—The State agency shall establish an advisory group, including representatives of jurisdictions identified in paragraph (3)(B)(ii) and other appropriate parties, to assist the State agency in setting priorities for the use of funds under this subsection. The advisory group shall include a representative of Mountain Empire Community College, Wise County, Virginia.”

On page 141, line 3, strike “(g)” and insert “(h)”.

On page 141, line 13, strike “(h)” and insert “(i)”.

#### HATCH AMENDMENT NO. 1727

Mr. CHAFEE (for Mr. HATCH) proposed an amendment to the bill S. 2019, supra; as follows:

On page 82, line 8, after “(D)” insert “and notices submitted by public water systems serving Indian Tribes provided to the Administrator pursuant to subparagraph (B) or (C)”.

On page 82 line 10, insert the following after the period:

“The report shall include information about public water system compliance on Indian reservations and about enforcement activities undertaken and financial assistance provided by the Administrator on Indian reservations, and shall make specific recommendations concerning the resources needed to improve compliance with this title on Indian reservations.”.

#### SMITH (AND GREGG) AMENDMENT NO. 1728

Mr. SMITH (for himself and Mr. GREGG) proposed an amendment to the bill S. 2019, supra; as follows:

On page 22, line 17, insert “but not” before “including”.

#### DOLE (AND OTHERS) AMENDMENT NO. 1729

Mr. DOLE (for himself, Mr. HEFLIN, Mr. MCCONNELL, Mr. PRESSLER, Mr. BURNS, Mr. BROWN, Mr. HATCH, Mr. BOND, Mr. GORTON, Mr. KEMPTHORNE, Mr. GRAMM, Mrs. HUTCHISON, and Mr. CRAIG) proposed an amendment to the bill S. 2019, supra; as follows:

On page 138, insert between lines 16 and 17 the following new section:

#### SEC. 16. PRIVATE PROPERTY RIGHTS.

(A) **SHORT TITLE.**—This section may be cited as the “Private Property Rights Act of 1994”.

(b) **FINDINGS.**—The Congress finds that—

(1) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the Constitution by the Fifth Amendment and made applicable to the States by the Fourteenth Amendment; and

(2) Federal agencies should take into consideration the impact of Governmental actions on the use and ownership of private property.

(c) **PURPOSE.**—The Congress, recognizing the important role that the use and ownership of private property plays in ensuring the economic and social well-being of the Nation, declares that it is the policy of the Federal Government to use all practicable means and measures to minimize takings of private property by the Federal Government

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

(1) the term “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and—

(A) includes the United States Postal Service; and

(B) does not include the General Accounting Office; and

(2) the term “taking of private property” means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

(e) **PRIVATE PROPERTY TAKING IMPACT ANALYSIS.**—

(1) **IN GENERAL.**—The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be inter-

preted and administered in accordance with the policies under this section; and

(B) all agencies of the Federal Government shall submit a certification to the Attorney General of the United States that a private property taking impact analysis has been completed before issuing or promulgating any policy, regulation, proposal, recommendation (including any recommendation or report on proposal for legislation), or related agency action which could result in a taking or diminution of use or value of private property.

(2) **CONTENT OF ANALYSIS.**—A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of whether a taking of private property shall occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) the effect of the policy, regulation, proposal, recommendation, or related agency action on the use of value of private property, including an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action requires compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would lessen the adverse effects on the use or value of private property;

(E) an estimate of the cost to the Federal Government if the Government is required to compensate a private property owner; and

(F) an estimate of the reduction in use or value of any affected private property as a result of such policy, regulation, proposal, recommendation, or related agency action.

(3) **PUBLIC AVAILABILITY OF ANALYSIS.**—An agency shall—

(A) make each private property taking impact analysis available to the public; and

(B) to the greatest extent practicable, transmit a copy of such analysis to the owner or any other person with a property right or interest in the affected property.

(4) **PRESUMPTIONS IN PROCEEDINGS.**—For the purpose of any agency action or administrative or judicial proceeding, there shall be a rebuttable presumption that the costs, values, and estimates in any private property takings impact analysis shall be outdated and inaccurate, if—

(A) such analysis was completed 5 years or more before the date of such action or proceeding; and

(B) such costs, values, or estimates have not been modified within the 5-year period preceding the date of such action or proceeding.

(f) **RULES OF CONSTRUCTION.**—Nothing in this section shall be construed to—

(1) limit any right or remedy, or bar any claim of any person relating to such person's property under any other law, including claims made under section 1346 or 1402 of title 28, United States Code, or chapter 91 of title 28, United States Code; or

(2) constitute a conclusive determination of the value of any property for purposes of any appraisal for the acquisition of property, or for the determination of damages.

(g) **STATUTE OF LIMITATIONS.**—No action may be filed in a court of the United States to enforce the provisions of this section on or after the date occurring 6 years after the date of the submission of the certification of the applicable private property taking impact analysis with the Attorney General.

(h) **EFFECTIVE DATE.**—The provisions of this section shall take effect 120 days after the date of the enactment of this Act.

## SIMPSON AMENDMENT NO. 1730

Mr. SIMPSON proposed amendment to the bill S. 2019, supra; as follows:

At the appropriate place in the bill, insert the following new section:

**SEC. . EXEMPTION OF CERTAIN CONTRACTS FROM REQUIREMENTS OF THE DAVIS-BACON ACT.**

Notwithstanding any other provision of law, the Act of March 3, 1931 (commonly known as the Davis-Bacon Act; 40 U.S.C. 276 et seq.) shall not apply to a contract entered into by the United States or District of Columbia for construction, alteration, or repair work that—

(1) is performed in a disadvantaged community (as defined by the State in which the disadvantaged community is located) in a State; and

(2) is necessary to comply with the requirements of title XIV of the Public Health Service Act (commonly known as the Safe Drinking Water Act; 42 U.S.C. 300f et seq.).

**GLENN (AND OTHERS AMENDMENT) NO. 1731**

Mr. GLENN (for himself, Mr. SASSER, and Mr. LEVIN) proposed an amendment to the bill S. 2019, supra; as follows:

At the appropriate place, insert the following:

**SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Department of Environmental Protection Act of 1993”.

(b) **TABLE OF CONTENTS.**—The table of contents is as follows:

Sec. 1. Short title and table of contents.

**TITLE I—ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET LEVEL**

Sec. 101. Short title.

Sec. 102. Findings.

Sec. 103. Establishment of the Department of Environmental Protection.

Sec. 104. Assistant Secretaries.

Sec. 105. Deputy Assistant Secretaries.

Sec. 106. Office of the General Counsel.

Sec. 107. Office of the Inspector General.

Sec. 108. Small business compliance assistance.

Sec. 109. Small governmental jurisdiction compliance assistance.

Sec. 110. Bureau of Environmental Statistics.

Sec. 111. Grant and contract authority for certain activities.

Sec. 112. Study of data needs.

Sec. 113. Miscellaneous employment restrictions.

Sec. 114. Termination of the Council on Environmental Quality and transfer of functions.

Sec. 115. Administrative provisions.

Sec. 116. Inherently governmental functions.

Sec. 117. References.

Sec. 118. Savings provisions.

Sec. 119. Conforming amendments.

Sec. 120. Additional conforming amendments.

Sec. 121. Sense of the Senate.

Sec. 122. Office of Environmental Justice.

Sec. 123. Human health and safety or the environment final regulations.

Sec. 124. Wetland determinations by a single agency.

**TITLE II—ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION**

Sec. 201. Establishment; membership.

Sec. 202. Commission responsibilities.

Sec. 203. Report to the President and Congress.

Sec. 204. Commission staff.

Sec. 205. Advisory groups.

Sec. 206. Termination of Commission.

Sec. 207. Funding; authorization of appropriations.

**TITLE III—EFFECTIVE DATE**

Sec. 301. Effective date.

**TITLE I—ELEVATION OF THE ENVIRONMENTAL PROTECTION AGENCY TO CABINET LEVEL**

**SEC. 101. SHORT TITLE.**

This title may be cited as the “Department of Environmental Protection Act”.

**SEC. 102. FINDINGS.**

The Congress finds that—

(1) recent concern with Federal environmental policy has highlighted the necessity of assigning to protection of the domestic and international environment a priority which is at least equal to that assigned to other functions of the Federal Government;

(2) protection of the environment increasingly involves cooperation with foreign states, including the most highly industrialized states all of whose top environmental officials have ministerial status;

(3) the size of the budget and the number of Federal civil servants devoted to tasks associated with environmental protection at the Environmental Protection Agency is commensurate with departmental status; and

(4) a cabinet-level Department of Environmental Protection should be established.

**SEC. 103. ESTABLISHMENT OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

(a) **REDESIGNATION.**—The Environmental Protection Agency is hereby redesignated as the Department of Environmental Protection (hereafter referred to as the “Department”) and shall be an executive department in the executive branch of the Government. The official acronym of the Department shall be the “U.S.D.E.P.”

(b) **SECRETARY OF ENVIRONMENTAL PROTECTION.**—(1) There shall be at the head of the Department a Secretary of Environmental Protection who shall be appointed by the President, by and with the advice and consent of the Senate. The Department shall be administered under the supervision and direction of the Secretary.

(2) The Secretary may not assign duties for or delegate authority for the supervision of the Assistant Secretaries, the General Counsel, the Director of Environmental Statistics, or the Inspector General of the Department to any officer of the Department other than the Deputy Secretary.

(3) Except as described under paragraph (2) of this section and section 104(b)(2), and notwithstanding any other provision of law, the Secretary may delegate any functions including the making of regulations to such officers and employees of the Department as the Secretary may designate, and may authorize such successive redelegations of such functions within the Department as determined to be necessary or appropriate.

(c) **DEPUTY SECRETARY.**—There shall be in the Department a Deputy Secretary of Environmental Protection, who shall be appointed by the President, by and with the advice and consent of the Senate. The Deputy Secretary shall perform such responsibilities as the Secretary shall prescribe and shall act as the Secretary during the absence or disability of the Secretary or in the event of a vacancy in the position of Secretary.

(d) **OFFICE OF THE SECRETARY.**—The Office of the Secretary shall consist of a Secretary

and a Deputy Secretary and may include an Executive Secretary and such other executive officers as the Secretary may determine necessary.

(e) **REGIONAL OFFICES.**—The Secretary is authorized to establish, alter, discontinue, or maintain such regional or other field offices as he may determine necessary to carry out the functions vested in him or other officials of the Department.

(f) **INTERNATIONAL RESPONSIBILITIES OF THE SECRETARY.**—(1) In addition to exercising other international responsibilities under existing provisions of law, the Secretary is—

(A) encouraged to assist the Secretary of State to carry out his primary responsibilities for coordinating, negotiating, implementing and participating in international agreements, including participation in international organizations, relevant to environmental protection; and

(B) authorized and encouraged to—

(i) conduct research on and apply existing research capabilities to the nature and impacts of international environmental problems and develop responses to such problems; and

(ii) provide technical and other assistance to foreign countries and international bodies to improve the quality of the environment.

(2) The Secretary of State shall consult with the Secretary of Environmental Protection and such other persons as he determines appropriate on such negotiations, implementations, and participations described under paragraph (1)(A).

(g) **AUTHORITY OF THE SECRETARY WITHIN THE DEPARTMENT.**—Except as provided under section 112, nothing in the provisions of this Act—

(1) authorizes the Secretary of Environmental Protection to require any action by any officer of any executive department or agency other than officers of the Department of Environmental Protection, except that this paragraph shall not affect any authority provided for by any other provision of law authorizing the Secretary of Environmental Protection to require any such actions;

(2) modifies any Federal law that is administered by any executive department or agency; or

(3) transfers to the Department of Environmental Protection any authority exercised by any other Federal executive department or agency prior to the date of the enactment of this Act, except the authority exercised by the Environmental Protection Agency.

(h) **APPLICATION TO THE DEPARTMENT OF ENVIRONMENTAL PROTECTION.**—The provisions of this Act apply only to activities of the Department of Environmental Protection, except where expressly provided otherwise.

(i) **ISSUANCE OF PERMITS.**—

(1) **GUIDES.**—At the time a person or small business concern (as defined in section 3 of the Small Business Act), including family farms, contacts an officer or employee of the Department to obtain a permit to engage in an activity under the jurisdiction of the Department, the Secretary shall make available, on request of the person, an employee of the Department to—

(A) act as a guide for the applicant in obtaining all necessary permits for the activity in the least quantity of time practicable; and

(B) facilitate the gathering and dissemination of information with respect to the Federal agencies and departments and agencies of States and political subdivisions of States that have a regulatory interest in the activity to reduce the period required to obtain all such necessary permits.

(2) DUTIES OF SECRETARY.—In issuing a permit to an applicant to carry out an activity under the jurisdiction of the Department, the Secretary shall—

(A) provide assistance and guidance to, and otherwise facilitate the processing of the application for, the applicant; and

(B) set reasonable deadlines for action to be taken on an application for the permit.

(3) USE OF GUIDES.—An applicant that chooses to use the services of a guide referred to in paragraph (1) may subsequently choose not to use the services at any time after requesting the guide.

#### SEC. 104. ASSISTANT SECRETARIES.

(a) ESTABLISHMENT OF POSITIONS.—There shall be in the Department such number of Assistant Secretaries, not to exceed 12, as the Secretary shall determine, each of whom shall be appointed by the President, by and with the advice and consent of the Senate.

(b) RESPONSIBILITIES OF ASSISTANT SECRETARIES.—(1) The Secretary shall assign to Assistant Secretaries such responsibilities as the Secretary considers appropriate, including, but not limited to—

- (A) enforcement;
- (B) compliance monitoring;
- (C) research and development;
- (D) air;
- (E) radiation;
- (F) water;
- (G) pesticides;
- (H) toxic substances;
- (I) solid waste;
- (J) hazardous waste;
- (K) hazardous waste cleanup;
- (L) emergency response;
- (M) international affairs;
- (N) policy, planning, and evaluation;
- (O) pollution prevention;
- (P) congressional affairs;
- (Q) intergovernmental affairs;
- (R) public affairs;
- (S) administration and resources management, information resources management, procurement and assistance management, and personnel and labor relations; and
- (T) regional operations and State and local capacity.

(2) The Secretary may assign and modify any responsibilities at his discretion under paragraph (1), except that the Secretary may not modify the responsibilities of any Assistant Secretary without prior written notification with explanation of such modification to the appropriate committees of the Senate and the House of Representatives.

(3) One of the Assistant Secretaries referred to under paragraph (1) shall be an Assistant Secretary for Indian Lands and shall be responsible for policies relating to the environment of Indian lands and affecting Native Americans.

(c) DESIGNATION OF RESPONSIBILITIES PRIOR TO CONFIRMATION.—Whenever the President submits the name of an individual to the Senate for confirmation as Assistant Secretary under this section, the President shall state the particular responsibilities of the Department such individual shall exercise upon taking office.

(d) CONTINUING PERFORMANCE OF FUNCTIONS.—On the effective date of this Act, the Administrator and Deputy Administrator of the Environmental Protection Agency shall be redesignated as the Secretary and Deputy Secretary of the Department of Environmental Protection, Assistant Administrators of the Agency shall be redesignated as Assistant Secretaries of the Department, the General Counsel and the Inspector General of the Agency shall be redesignated as the General Counsel and the Inspector General of the

Department, and the Chief Financial Officer of the Agency shall be redesignated as the Chief Financial Officer of the Department, without renomination or reconfirmation.

(e) CHIEF INFORMATION RESOURCES OFFICER.—(1) The Secretary shall designate the Assistant Secretary whose responsibilities include information resource management functions as required by section 3506 of title 44, United States Code, as the Chief Information Resources Officer of the Department.

(2) The Chief Information Resources Officer shall—

(A) advise the Secretary on information resource management activities of the Department as required by section 3506 of title 44, United States Code;

(B) develop and maintain an information resources management system for the Department which provides for—

(i) the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759);

(ii) the implementation of all applicable government-wide and Department information policies, principles, standards, and guidelines with respect to information collection, paperwork reduction, privacy and security of records, sharing and dissemination of information, acquisition and use of information technology, and other information resource management functions;

(iii) the periodic evaluation of and, as needed, the planning and implementation of improvements in the accuracy, completeness, and reliability of data and records contained with Department information systems; and

(iv) the development and annual revision of a 5-year plan for meeting the Department's information technology needs; and

(C) report to the Secretary as required under section 3506 of title 44, United States Code.

#### SEC. 105. DEPUTY ASSISTANT SECRETARIES.

(a) ESTABLISHMENT OF POSITIONS.—There shall be in the Department such number of Deputy Assistant Secretaries as the Secretary may determine.

(b) APPOINTMENTS.—Each Deputy Assistant Secretary—

(1) shall be appointed by the Secretary; and

(2) shall perform such functions as the Secretary shall prescribe.

(c) FUNCTIONS.—Functions assigned to an Assistant Secretary under section 104(b) may be performed by one or more Deputy Assistant Secretaries appointed to assist such Assistant Secretary.

#### SEC. 106. OFFICE OF THE GENERAL COUNSEL.

There shall be in the Department the Office of the General Counsel. There shall be at the head of such office a General Counsel who shall be appointed by the President, by and with the advice and consent of the Senate. The General Counsel shall be the chief legal officer of the Department and shall provide legal assistance to the Secretary concerning the programs and policies of the Department.

#### SEC. 107. OFFICE OF THE INSPECTOR GENERAL.

The Office of Inspector General of the Environmental Protection Agency, established in accordance with the Inspector General Act of 1978, is hereby redesignated as the Office of Inspector General of the Department of Environmental Protection.

#### SEC. 108. SMALL BUSINESS COMPLIANCE ASSISTANCE.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Secretary of Environmental Protection shall establish within the

Department a Small Business Ombudsman Office (hereafter in this section referred to as the "Office"). The Office shall be headed by a Director designated by the Secretary.

(2) DUTIES.—

(A) IN GENERAL.—The Director shall report directly to the Secretary. The Secretary, acting through the Director, shall develop and carry out programs of environmental compliance and technical assistance for small business concerns (as defined in section 3 of the Small Business Act), including family farms.

(B) SPECIFIC DUTIES.—The duties of the Office shall include—

(i) providing to small business concerns—

(I) confidential compliance assistance;

(II) explanations of environmental regulatory requirements; and

(III) available environmental reports and documents;

(ii) assembling and disseminating to small business concerns information on approaches to achieving compliance with environmental laws and improving environmental performance and product yield, including new environmental technologies and techniques for preventing pollution;

(iii) carrying out the functions assigned to the Small Business Ombudsman under section 507 of the Clean Air Act Amendments of 1990;

(iv) serving as the Department's liaison to and advocate for the small business community;

(v) ensuring, as appropriate, consideration of the concerns of small business in the regulatory development process, including ensuring that reporting requirements are consistent and avoid unnecessary redundancy across regulatory programs, to the extent possible, and ensuring effective implementation of the Regulatory Flexibility Act;

(vi) coordinating the Department's small business compliance and technical assistance programs with other Federal and State agencies having responsibilities for carrying out and enforcing environmental laws; and

(vii) providing assistance in permitting, where appropriate.

(b) COORDINATION WITH NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 180 days after the date of enactment of this Act, the Secretary of Environmental Protection and the Secretary of Commerce shall enter into such agreements as may be necessary to permit the Department to provide technical assistance and support to the Manufacturing Technology Centers administered by the National Institute of Standards and Technology of the Department of Commerce. Such assistance shall include—

(1) preparing environmental assistance packages for small business concerns generally, and where appropriate, for specific small business sectors, including information on—

(A) environmental compliance requirements and methods for achieving compliance;

(B) new environmental technologies;

(C) alternatives for preventing pollution that are generally applicable to the small business sector; and

(D) guidance for identifying and applying opportunities for preventing pollution at individual facilities;

(2) providing technical assistance to small business concerns seeking to act on the information provided under paragraph (1);

(3) coordinating with the National Institute of Standards and Technology to identify those small business sectors that need improvement in environmental compliance or

in developing methods to prevent pollution; and

(4) developing and implementing an action plan for providing assistance to improve environmental performance of small business sectors in need of such improvement.

(c) **COORDINATION WITH OTHER FEDERALLY SUPPORTED EXTENSION PROGRAMS.**—The Secretary of Environmental Protection may coordinate with other small business and agricultural extension programs and centers, as appropriate, to provide environmental assistance to small businesses.

**SEC. 109. SMALL GOVERNMENTAL JURISDICTION COMPLIANCE ASSISTANCE.**

(a) **IN GENERAL.**—The Secretary of Environmental Protection shall develop and carry out programs of environmental compliance and technical assistance for small governmental jurisdictions as defined in section 601(5) of title 5, United States Code.

(b) **SPECIFIC DUTIES.**—The duties of the Secretary of Environmental Protection shall include—

(1) providing to small governmental jurisdictions—

- (A) compliance assistance;
- (B) explanations of environmental regulatory requirements; and
- (C) available environmental reports and documents;

(2) assembling and disseminating to small governmental jurisdictions information on approaches to achieving compliance with environmental laws and improving environmental performance, including new environmental technologies and techniques for preventing pollution;

(3) designating liaisons to serve as advocates for small governmental jurisdictions, as appropriate;

(4) ensuring, as appropriate, consideration of the concerns of small governmental jurisdictions in the regulatory development process, including ensuring that reporting requirements are consistent and avoid unnecessary redundancy across regulatory programs, to the extent possible, and ensuring effective implementation of the Regulatory Flexibility Act; and

(5) coordinating the Department of Environmental Protection's small governmental jurisdiction environmental compliance and technical assistance programs with other Federal and State agencies having responsibilities for carrying out and enforcing environmental laws; and

(6) providing assistance in permitting, where appropriate.

**SEC. 110. BUREAU OF ENVIRONMENTAL STATISTICS.**

(a) **ESTABLISHMENT.**—(1) There is established within the Department a Bureau of Environmental Statistics (hereafter referred to as the "Bureau"). The Bureau shall be responsible for—

(A) compiling, analyzing, and publishing a comprehensive set of environmental quality statistics which should provide timely summary in the form of industrywide aggregates, multiyear averages, or totals or some similar form and include information on—

(i) the nature, source, and amount of pollutants in the environment; and

(ii) the effects on the public and the environment of those pollutants;

(B) promulgating guidelines for the collection of information by the Department required for the statistics under this paragraph to assure that the information is accurate, reliable, relevant, and in a form that permits systematic analysis;

(C) coordinating the collection of information by the Department for developing such

statistics with related information-gathering activities conducted by other Federal agencies;

(D) making readily accessible the statistics published under this paragraph; and

(E) identifying missing information of the kind described under subparagraph (A) (i) and (ii), reviewing these information needs at least annually with the Science Advisory Board, and making recommendations to the appropriate Department of Environmental Protection officials concerning extramural and intramural research programs to provide such information.

(2) Nothing in the provisions of paragraph (1) shall authorize the Bureau to require the collection of any data by any other Department, State or local government, or to establish observation or monitoring programs. The Bureau shall not duplicate the information collection functions of other Federal agencies.

(3) Information compiled by the Bureau of Environmental Statistics, which has been submitted for purposes of statistical reporting requirements of this law, shall not be disclosed publicly in a manner that would reveal the identity of the submitter, including submissions by Federal, State, or local governments, or reveal the identity of any individual consistent with the provisions of section 552a of title 5, United States Code (the Privacy Act of 1974). This paragraph shall not affect the availability of data provided to the Department under any other provision of law administered by the Department. The confidentiality provisions of other statutes authorizing the collection of environmental statistics shall also apply, including but not limited to, section 14 of the Toxic Substances Control Act (15 U.S.C. 2613), section 2(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136h), section 114(c) of the Clean Air Act (42 U.S.C. 741(c)), and section 1905 of title 18, United States Code.

(b) **DIRECTOR OF ENVIRONMENTAL STATISTICS.**—The Bureau shall be under the direction of a Director of Environmental Statistics (hereafter referred to as the "Director") who shall be appointed by the President, by and with the advice and consent of the Senate. The term of the Director shall be 4 years. The Director shall be a qualified individual with experience in the compilation and analysis of environmental statistics. The Director shall report directly to the Secretary. The Director shall be compensated at the rate provided for at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(c) **ENVIRONMENTAL STATISTICS ANNUAL REPORT.**—On July 1, 1995, and each July 1 thereafter, the Director shall submit to the President an Environmental Statistics Annual Report (hereafter referred to as the "Report"). The Report shall include, but not be limited to—

(1) statistics on environmental quality including—

(A) The environmental quality of the Nation with respect to all aspects of the environment, including, but not limited to, the air, aquatic ecosystems, including marine, estuarine, and fresh water, and the terrestrial ecosystems, including, but not limited to, the forest, dry-land, wetland, range, urban, suburban, and rural environment; and

(B) changes in the natural environment, including the plant and animal systems, and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(2) statistics on the effects of changes in environmental quality on human health and nonhuman species and ecosystems;

(3) documentation of the method used to obtain and assure the quality of the statistics presented in the Report;

(4) economic information on the current and projected costs and benefits of environmental protection; and

(5) recommendations on improving environmental statistical information.

(d) **CONTINUING PERFORMANCE OF THE FUNCTIONS OF THE DIRECTOR PENDING CONFIRMATION.**—An individual who, on the effective date of this Act, is performing any of the functions required by this section to be performed by the Director may continue to perform such functions until such functions are assigned to an individual appointed as the Director under this Act.

(e) **ADVISORY COUNCIL ON ENVIRONMENTAL STATISTICS.**—The Director shall appoint an Advisory Council on Environmental Statistics, comprised of no more than 6 private citizens who have expertise in environmental statistics and analysis (except that at least one of such appointees should have expertise in economics) to advise the Director on environmental statistics and analyses, including whether the statistics and analyses disseminated by the Bureau are of high quality and are based upon the best available objective information. The Council shall be subject to the provisions of the Federal Advisory Committee Act.

(f) **REVIEW OF REGULATIONS.**—For each proposed new regulation and each proposed change to existing regulations the Director shall publish in the Federal Register as part of the notice of the proposed rulemaking, a comprehensive assessment of specific costs and benefits resulting from implementation of the proposed new regulation or the proposed regulatory change including an assessment of the total number of direct and indirect jobs to be gained or lost as a result of implementation of the proposed new regulation or the proposed regulatory change. Such assessment shall be required to the extent that the Department of Environmental Protection is not in compliance with any applicable Executive Order requiring an analysis of costs and benefits for proposed regulations submitted to the Office of Management and Budget for review. The assessment required by this subsection shall not be construed to amend, modify, or alter any statute and shall not be subject to judicial review. Nothing in this section shall be construed to grant a cause of action to any person.

**SEC. 111. GRANT AND CONTRACT AUTHORITY FOR CERTAIN ACTIVITIES.**

The Secretary may make grants to and enter into contracts with State and local governments, Indian tribes, universities, and other organizations to assist them in meeting the costs of collecting specific data and other short term activities that are related to the responsibilities and functions under section 108(a)(1) (A), (B), (C), and (D).

**SEC. 112. STUDY OF DATA NEEDS.**

(a) **STUDY OF DATA NEEDS.**—(1) No later than 1 year after the start of Bureau operations, the Secretary of the Department of Environmental Protection, in consultation with the Director of the Bureau and the Assistant Secretary designated as Chief Information Resources Officer, shall enter into an agreement with the National Academy of Sciences for a study, evaluation, and report on the adequacy of the data collection procedures and capabilities of the Department. No later than 18 months following an agreement, the National Academy of Sciences shall report its findings to the Secretary and the Congress. The report shall include an evaluation of the Department's data collection resources, needs, and requirements, and

shall include an assessment and evaluation of the following systems, capabilities, and procedures established by the Department to meet those needs and requirements:

(A) data collection procedures and capabilities;

(B) data analysis procedures and capabilities;

(C) the ability to integrate data bases;

(D) computer hardware and software capabilities;

(E) management information systems, including the ability to integrate management information systems;

(F) Department personnel; and

(G) the Department's budgetary needs and resources for data collection, including an assessment of the adequacy of the budgetary resources provided to the Department and budgetary resources used by the Department for data collection needs and purposes.

(2) The report shall include recommendations for improving the Department's data collection systems, capabilities, procedures, data collection, and analytical hardware and software, and for improving its management information systems.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary to carry out the provisions of this section.

#### SEC. 113. MISCELLANEOUS EMPLOYMENT RESTRICTIONS.

(a) PROHIBITED EMPLOYMENT AND ADVANCEMENT CONSIDERATIONS.—Except as otherwise provided in this Act, political affiliation or political qualification may not be taken into account in connection with the appointment of any person to any position in the career civil service or in the assignment or advancement of any career civil servant in the Department.

(b) REPORTS ON IMPLEMENTATION.—One year after the date of the enactment of this title and again 3 years after the date of the enactment of this title, the Secretary shall report to the Senate Committees on Appropriations, Governmental Affairs, and Environment and Public Works and to the House of Representatives on the estimated additional cost of implementing this title over the cost as if this title had not been implemented, including a justification of increased staffing not required in the execution of this title.

#### SEC. 114. TERMINATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY AND TRANSFER OF FUNCTIONS.

(a) TRANSFER OF FUNCTIONS OF THE COUNCIL ON ENVIRONMENTAL QUALITY.—(1) Except as provided under paragraph (2), all functions of the Council on Environmental Quality under titles I and II of the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and under any other law, are transferred to the Secretary. The Secretary is authorized to take all necessary action, including the promulgation of regulations, to carry out these functions.

(2) Referrals of interagency disagreements concerning proposed major Federal actions significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 102(2)(C)) and concerning matters under section 309(b) of the Clean Air Act (42 U.S.C. 7609(b)) shall be made to the President for resolution.

(b) TERMINATION OF THE COUNCIL ON ENVIRONMENTAL QUALITY.—(1) Section 204 of the National Environmental Policy Act (42 U.S.C. 4344) is amended by striking out "Council" and inserting in lieu thereof "Secretary of Environmental Protection".

(2) Sections 202, 203, 205, 206, 207, and 208 of the National Environmental Policy Act (42 U.S.C. 4342, 4343, 4345, 4346, 4346a, and 4346b) are repealed.

(3) The Environmental Quality Improvement Act of 1970 (42 U.S.C. 4371 through 4375) is repealed.

(4) Section 204 of the National Environmental Policy Act (42 U.S.C. 4344) (as amended by paragraph (1) of this subsection) is redesignated as section 202 of such Act.

(5) The heading for title II of the National Environmental Policy Act is amended to read as follows:

#### "TITLE II

#### "ENVIRONMENTAL QUALITY REPORT".

(c) REFERENCES IN FEDERAL LAW.—Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or relating to the Council on Environmental Quality—

(1) with regard to functions transferred under subsection (a)(1), shall be deemed to refer to the Secretary; and

(2) with regard to disagreements and matters described under subsection (a)(2), shall be deemed to refer to the President.

(d) AVAILABILITY OF FUNDS.—Unobligated funds available to the Council on Environmental Quality shall remain available to the Department until expended for the gradual and orderly termination of the Council and transfer of Council functions as provided in this Act.

(e) SAVINGS PROVISIONS.—(1) All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(A) which have been issued, made, granted, or allowed to become effective by the President, by the Council on Environmental Quality, or by a court of competent jurisdiction, in the performance of functions of the Council on Environmental Quality, and

(B) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Environmental Protection, or other authorized official, a court of competent jurisdiction, or by operation of law.

(2) The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending before the Council on Environmental Quality at the time this Act takes effect, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this paragraph shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(3) The provisions of this section shall not affect suits commenced before the date this Act takes effect, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(4) No suit, action, or other proceeding commenced by or against the Council on Environmental Quality, or by or against any individual in the official capacity of such individual as an officer of the Council on Environmental Quality, shall abate by reason of the enactment of this Act.

(5) Any administrative action relating to the preparation or promulgation of a regulation by the Council on Environmental Quality may be continued by the Department or the President with the same effect as if this Act had not been enacted.

(6) The contracts, liabilities, records, property, and other assets and interests of the Council on Environmental Quality shall, after the effective date of this Act, be considered to be the contracts, liabilities, records, property, and other assets and interests of the Department.

#### SEC. 115. ADMINISTRATIVE PROVISIONS.

(a) ACCEPTANCE OF MONEY AND PROPERTY.—

(1) The Secretary may accept and retain money, uncompensated services, and other real and personal property or rights (whether by gift, bequest, devise, or otherwise) for the purpose of carrying out the Department's programs and activities, except that the Secretary shall not endorse any company, product, organization, or service. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be credited in a separate fund in the Treasury of the United States and shall be available for disbursement upon the order of the Secretary.

(2) The Secretary shall prescribe regulations and guidelines setting forth the criteria the Department shall use in determining whether to accept a gift, bequest, or devise. Such criteria shall take into consideration whether the acceptance of the property would reflect unfavorably upon the Department's or any employee's ability to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity of or the appearance of the integrity of a Government program or any official involved in that program.

(b) SEAL OF THE DEPARTMENT.—(1) On the effective date of this Act, the seal of the Environmental Protection Agency with appropriate changes shall be the seal of the Department of Environmental Protection, until such time as the Secretary may cause a seal of office to be made for the Department of Environmental Protection of such design as the Secretary shall approve.

(2)(A) Chapter 33 of title 18, United States Code, is amended by adding at the end thereof the following new section:

#### "§ 716. Department of Environmental Protection Seal

"(a) Whoever knowingly displays any printed or other likeness of the official seal of the Department of Environmental Protection, or any facsimile thereof, in, or in connection with, any advertisement, poster, circular, book, pamphlet, or other publication, public meeting, play, motion picture, telecast, or other production, or on any building, monument, or stationery, for the purpose of conveying, or in a manner reasonably calculated to convey, a false impression of sponsorship or approval by the Government of the United States or by any department, agency, or instrumentality thereof, shall be fined not more than \$250 or imprisoned not more than 6 months, or both.

"(b) Whoever, except as authorized under regulations promulgated by the Secretary of Environmental Protection and published in the Federal Register, knowingly manufactures, reproduces, sells, or purchases for resale, either separately or appended to any article manufactured or sold, any likeness of

the official seal of the Department of Environmental Protection, or any substantial part thereof, except for manufacture or sale of the article for the official use of the Government of the United States, shall be fined not more than \$250 or imprisoned not more than 6 months, or both.

"(c) A violation of subsection (a) or (b) may be enjoined at the suit of the Attorney General of the United States upon complaint by any authorized representative of the Secretary of the Department of Environmental Protection."

(B) The table of sections for chapter 33 of title 18, United States Code, is amended by adding at the end thereof:

"716. Department of Environmental Protection Seal."

(c) ACQUISITION OF COPYRIGHTS AND PATENTS.—The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(d) ADVISORY COMMITTEE COMPENSATION.—The Secretary is authorized to pay members of advisory committees and others who perform services as authorized under section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem rate equivalent to the rate for level V of the Executive Schedule under section 5316 of title 5, United States Code.

#### SEC. 116. INHERENTLY GOVERNMENTAL FUNCTIONS.

(a) GOVERNMENT OFFICERS AND EMPLOYEES.—(1) Inherently governmental functions of the Department shall be performed only by officers and employees of the United States. For purposes of this section, the term "inherently governmental function" means any activity which is so intimately related to the public interest as to mandate performance by Government officers and employees. Inherently governmental functions include those activities which require either the exercise of discretion in applying Government authority or the use of value judgment in making decisions for the Government. The Secretary shall promulgate regulations or internal guidance to implement this section. This section is not intended, and may not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, the Department, its officers, or any person.

(b) CONFLICTS OF INTEREST.—(1) The Secretary shall by regulation require any person proposing to enter into a contract, grant, or cooperative agreement whether by sealed bid or negotiation, for the conduct of research, development, evaluation activities, or for consulting services, to provide the Secretary, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Secretary, bearing on whether that person has a possible conflict of interest with respect to—

(A) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons; or

(B) being given an unfair competitive advantage.

(2) Such person shall ensure, in accordance with regulations prescribed by the Sec-

retary, compliance with this section by subcontractors of such person who are engaged to perform similar services.

(3) For purposes of this subsection, the term "consulting services" includes—

(A) management and professional support services;

(B) studies, analyses, and evaluations;

(C) engineering and technical services, excluding routine engineering services such as automated data processing and architect and engineering contracts; and

(D) research and development.

(c) REQUIRE AFFIRMATIVE FINDING; CONFLICTS OF INTEREST WHICH CANNOT BE AVOIDED; MITIGATION OF CONFLICTS.—(1) Subject to the provisions of paragraph (2), the Secretary may not enter into any such contract, agreement, or arrangement, unless he affirmatively finds, after evaluating all such information and any other relevant information otherwise available to him, either that—

(A) there is little or no likelihood that a conflict of interest would exist; or

(B) that such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement.

(2) If the Secretary determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Secretary may enter into such contract, agreement, or arrangement, if the Secretary—

(A) determines that it is in the best interests of the United States to do so; and

(B) includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(d) PUBLIC NOTICE REGARDING CONFLICTS OF INTEREST.—The Secretary shall promulgate regulations which require public notice to be given whenever the Secretary determines that the award of a contract, agreement, or arrangement may result in a conflict of interest which cannot be avoided by including appropriate conditions therein.

(e) DISCLAIMER.—Nothing in this section shall preclude the Department from promulgating regulations to monitor potential conflicts after the contract award.

(f) CENTRAL FILE.—The Department shall maintain a central file regarding all cases when a public notice is issued. Other information required under this section shall also be compiled. Access to this information shall be controlled to safeguard any proprietary information.

(g) REGULATIONS.—No later than 120 days after the effective date of this Act, the Secretary shall promulgate regulations for the implementation of this section.

#### SEC. 117. REFERENCES.

Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining—

(1) to the Administrator of the Environmental Protection Agency shall be deemed to refer to the Secretary of Environmental Protection;

(2) to the Environmental Protection Agency shall be deemed to refer to the Department of Environmental Protection;

(3) to the Deputy Administrator of the Environmental Protection Agency shall be deemed to refer to the Deputy Secretary of Environmental Protection; or

(4) to any Assistant Administrator of the Environmental Protection Agency shall be deemed to refer to an Assistant Secretary of the Department of Environmental Protection.

#### SEC. 118. SAVINGS PROVISIONS.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, agreements, grants, contracts, certificates, licenses, registrations, privileges, and other administrative actions—

(1) which have been issued, made, granted, or allowed to become effective by the President, by the Administrator of the Environmental Protection Agency, or by a court of competent jurisdiction, in the performance of functions of the Administrator or the Environmental Protection Agency, and

(2) which are in effect at the time this Act takes effect, or were final before the effective date of this Act and are to become effective on or after the effective date of this Act, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary of Environmental Protection, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b) PROCEEDINGS NOT AFFECTED.—The provisions of this Act shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending before the Environmental Protection Agency at the time this Act takes effect, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(c) SUITS NOT AFFECTED.—The provisions of this Act shall not affect suits commenced before the date this Act takes effect, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Environmental Protection Agency, or by or against any individual in the official capacity of such individual as an officer of the Environmental Protection Agency, shall abate by reason of the enactment of this Act.

(e) ADMINISTRATIVE ACTIONS RELATING TO PROMULGATION OF REGULATIONS.—Any administrative action relating to the preparation or promulgation of a regulation by the Environmental Protection Agency may be continued by the Department with the same effect as if this Act had not been enacted.

(f) PROPERTY AND RESOURCES.—The contracts, liabilities, records, property, and other assets and interests of the Environmental Protection Agency shall, after the effective date of this Act, be considered to be the contracts, liabilities, records, property, and other assets and interests of the Department.

(g) SAVINGS.—The Department of Environmental Protection and its officers, employees, and agents shall have all the powers and authorities of the Environmental Protection Agency.

#### SEC. 119. CONFORMING AMENDMENTS.

(a) PRESIDENTIAL SUCCESSION.—Section 19(d)(1) of title 3, United States Code, is

amended by inserting before the period at the end thereof the following: "Secretary of Environmental Protection".

(b) DEFINITION OF DEPARTMENT, CIVIL SERVICE LAWS.—Section 101 of title 5, United States Code, is amended by adding at the end thereof the following: "The Department of Environmental Protection".

(c) COMPENSATION, LEVEL I.—Section 5312 of title 5, United States Code, is amended by adding at the end thereof the following: "Secretary of Environmental Protection".

(d) COMPENSATION, LEVEL II.—Section 5313 of title 5, United States Code, is amended by striking out "Administrator of Environmental Protection Agency" and inserting in lieu thereof "Deputy Secretary of Environmental Protection".

(e) COMPENSATION, LEVEL IV.—Section 5315 of title 5, United States Code, is amended—

(1) by striking out "Inspector General, Environmental Protection Agency" and inserting in lieu thereof "Inspector General, Department of Environmental Protection"; and

(2) by striking each reference to an Assistant Administrator of the Environmental Protection Agency and by adding at the end thereof the following:

"Assistant Secretaries, Department of Environmental Protection (12).

"General Counsel, Department of Environmental Protection."; and

(3) by striking out "Chief Financial Officer, Environmental Protection Agency" and inserting in lieu thereof "Chief Financial Officer, Department of Environmental Protection".

(f) COMPENSATION, LEVEL V.—Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following:

"Director of the Bureau of Environmental Statistics, Department of Environmental Protection.

"Executive Director of the Commission on Improving Environmental Protection.".

(g) INSPECTOR GENERAL ACT.—The Inspector General Act of 1978 is amended—

(1) in section 11(1), by inserting "Environmental Protection," after "Energy,"; and

(2) in section 11(2), by inserting "Environmental Protection," after "Energy,".

#### SEC. 120. ADDITIONAL CONFORMING AMENDMENTS.

After consultation with the Committee on Governmental Affairs and the Committee on Environment and Public Works and other appropriate committees of the United States Senate and the appropriate committees of the House of Representatives, the Secretary of Environmental Protection shall prepare and submit to the Congress legislation which the Secretary determines is necessary and appropriate containing technical and conforming amendments to the United States Code, and to other provisions of law, to reflect the changes made by this Act.

#### SEC. 121. SENSE OF THE SENATE.

It is the sense of the Senate that building the capacity of State and local governments to more efficiently and effectively implement and manage environmental regulations should be a primary mission of the Department of Environmental Protection.

#### SEC. 122. OFFICE OF ENVIRONMENTAL JUSTICE.

There is established within the Department the Office of Environmental Justice. The Office of Environmental Justice shall—

(1) develop a strategic plan to ensure equality in environmental protection;

(2) evaluate whether environmental policy is helping individuals who suffer the highest exposure to pollution, and identify opportunities for preventing or reducing such exposure;

(3) compile an annual report on progress in achieving environmental equity;

(4) require the collection of data on environmental health effects so that impacts on different individuals or groups can be understood;

(5) identify environmental high impact areas which are subject to the highest loadings of toxic chemicals, through all media; and

(6) assess the health effects that may be caused by emissions in the environmental high impact areas of highest impact.

#### SEC. 124. WETLAND DETERMINATIONS BY A SINGLE AGENCY.

In consultation with the Secretary of Agriculture, the Secretary of Environmental Protection, the Secretary of the Army, and the Secretary of the Interior, the President shall, within 90 days of the date of enactment of this Act, make recommendations and report to the Congress on measures to—

(1) provide that a single Federal agency be responsible for making technical determinations, including identification of wetlands, on agricultural lands with respect to wetland or converted wetland in order to reduce confusion among agricultural producers; and

(2) provide that the Soil Conservation Service be the Federal agency responsible for all such technical determinations concerning wetlands on agricultural lands.

#### TITLE II—ESTABLISHMENT OF THE COMMISSION ON IMPROVING ENVIRONMENTAL PROTECTION

##### SEC. 201. ESTABLISHMENT; MEMBERSHIP.

(a) ESTABLISHMENT.—There is established the Commission on Improving Environmental Protection (hereafter referred to as "the Commission") whose 13 members including the Chairman shall be composed of experts in governmental organization (with emphasis on environmental organization), management of organizations and environmental regulation and improved environmental governmental service delivery, consisting of—

(1) 7 members to be appointed by the President;

(2) 2 members to be appointed by the Speaker of the House of Representatives;

(3) 1 member to be appointed by the Minority Leader of the House of Representatives;

(4) 2 members to be appointed by the Senate Majority Leader; and

(5) 1 member to be appointed by the Senate Minority Leader.

(b) CHAIRMAN.—The Chairman of the Commission shall be appointed by the President.

(c) POLITICAL PARTY AFFILIATION.—Notwithstanding any other provision of this section, no more than 7 members of the Commission may be from the same political party.

##### SEC. 202. COMMISSION RESPONSIBILITIES.

(a) RESPONSIBILITIES.—The Commission shall be responsible for examining and making recommendations on the management and implementation of the environmental laws and programs within the jurisdiction of the Department of Environmental Protection in order to enhance the ability of the Department to preserve and protect human health and the environment. The Commission shall make recommendations and otherwise advise the President and the Congress on the need to—

(1) enhance and strengthen the management and implementation of existing programs within the Department;

(2) enhance the organization of the Department to eliminate duplication and overlap between different programs;

(3) enhance the coordination between different programs and offices within the Department;

(4) enhance the consistency of policies throughout the Department;

(5) establish new and enhanced small business and small governmental jurisdictions compliance assistance programs, and to strengthen organizational mechanisms in the Department for providing better compliance and technical assistance to small businesses and small governmental jurisdictions; and

(6) enhance the capacity of State and local governments to manage, finance, and implement environmental laws (including regulations).

(b) RECOMMENDATIONS.—The Commission shall provide specific steps and proposals for implementing the Commission's recommendations including an estimate of the costs of implementing such recommendations, except that the Commission shall not suggest substantive changes in the policy expressed by existing laws.

(c) CONFLICT OF INTERESTS.—For purposes of the provisions of chapter 11 of part I of title 18, United States Code, a member of the Commission (to whom such provisions would not otherwise apply except for this subsection) shall be a special Government employee.

#### SEC. 203. REPORT TO THE PRESIDENT AND CONGRESS.

The Commission shall report to the President and the Congress on its investigation, findings, and recommendations in an interim report no later than 12 months after the effective date of this title, and in a final report no later than 24 months after the effective date of this title. The interim report shall be made available for public review and comment, and the comments taken into account in finalizing the report.

#### SEC. 204. COMMISSION STAFF.

The Commission shall appoint an Executive Director who shall be compensated at a rate not to exceed the rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of title 5, United States Code. With the approval of the Commission the Executive Director may appoint and fix the compensation of staff sufficient to enable the Commission to carry out its duties.

#### SEC. 205. ADVISORY GROUPS.

The Chairman shall convene at least one advisory group to assist the Commission in developing its recommendations. One advisory group shall be composed of past staff of the Department of Environmental Protection and its predecessor Environmental Protection Agency, other Federal and State officials experienced in administering environmental protection programs, members of the regulated community and members of public interest groups organized to further the goals of environmental protection. The Executive Director is authorized to pay members of advisory committees and others who perform services as authorized under section 3109 of title 5, United States Code, at rates for individuals not to exceed the per diem rate equivalent to the rate for level V of the Executive Schedule under section 5316 of title 5, United States Code. The advisory group shall be subject to the provisions of the Federal Advisory Committee Act.

#### SEC. 206. TERMINATION OF COMMISSION.

No later than 90 days after the date on which the Commission submits its final report, the Commission shall terminate unless otherwise directed by the President.

**SEC. 207. FUNDING; AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated \$2,000,000 in fiscal year 1993 and \$2,000,000 in fiscal year 1994 to carry out the provisions of this title.

**TITLE III—EFFECTIVE DATE**

**SEC. 301. EFFECTIVE DATE.**

This Act and the amendments made by this Act shall take effect on such date during the 6-month period beginning on the date of enactment, as the President may direct in an Executive order. If the President fails to issue an Executive order for the purpose of this section, this Act and such amendments shall take effect 6 months after the date of the enactment of this Act.

**BAUCUS AMENDMENT NO. 1732**

Mr. BAUCUS proposed an amendment to the bill S. 2019, supra, as follows:

On page 47, line 3, strike "is identified in an intended use plan developed by the State pursuant to section 1474 and the assistance" and inserting in lieu thereof "pursuant to part G or any other Federal or State program".

On page 48, as amended by Amendment No. 1699, strike the following:

"requirements established by the State are based on—

"(I) occurrence data and other relevant characteristics of the contaminant or the systems subject to the requirements; and

"(II) the monitoring frequencies are no less frequent than the requirements of the national primary drinking water regulations for a contaminant that has been detected at a quantifiable level during the 5-year period ending on the date of the monitoring."

and insert in lieu thereof the following:

"requirements established by the State—

"(I) are based on occurrence data and other relevant characteristics of the contaminant or the systems subject to the requirements; and

"(II) include monitoring frequencies for public water systems in which a contaminant has been detected at a quantifiable level no less frequent than required in the national primary drinking water regulation for the contaminant for a period of 5 years after the detection.

On page 51, line 2, insert the following:

"(iv) OTHER STATES.—The Governor of any State that does not have primary enforcement responsibility under section 1413 on the date of enactment of this clause may submit to the Administrator a request that the Administrator modify the monitoring requirements established by the Administrator and applicable to public water systems in that State, and the Administrator shall modify the requirements for public water systems in that State if the request of the Governor is in accordance with each of the requirements of this subparagraph that apply to applications from States that have primary enforcement responsibility. A decision by the Administrator to approve a request under this clause shall be for a period of 3 years and may subsequently be extended for periods of 5 years."

On page 67, line 9, strike "and" and insert "or".

On page 71, line 1, strike "the issuance of the order assessing the penalty" and insert "the proposed issuance of such order."

On page 76, line 23, strike "1432".

On page 78, line 9, strike "to a private entity".

On page 83, lines 11 and 12, strike "and Prohibition on Certain Return Flows."

On page 84, line 21, insert ", except manufacturers," after "supplies".

On page 86, strike lines 21 through 25.

On page 103, line 24, strike "approved pursuant to section 1429" and insert "pursuant to section 1420".

On page 105, line 7, strike "(including travelers)" and insert "endangerment,".

On page 116, line 12, strike "subparagraph" and insert "subparagraphs".

On page 116, line 22, strike ":", and insert the following new subparagraph

"(C) STATE COST ADJUSTMENTS.—The Administrator shall revise cost estimates used in the resource model for any particular State to reflect costs more likely to be experienced in that State, if—

(i) the State requests the modification;

(ii) the revised estimates assure full and effective administration of the public water system supervision program in the States and the revised estimates do not overstate the resources needed to administer such program; and

(iii) the basis for the estimates are used consistently under this title, including for purposes of section 1474(a)(2) in each fiscal year for which such section is applicable."

On page 130, between lines 13 and 14, insert the following:

(4) cost-benefit analysis and risk assessment should be presented with a clear statement of the uncertainties in the analysis or assessment;

On page 130, line 14, strike "(4)" and insert "(5)".

On page 130, line 20, strike "(5)" and insert "(6)".

On page 131, line 10, strike "(6)" and insert "(7)".

On page 131, line 11, strike "(7)" and insert "(8)".

Beginning on page 132, line 25, strike all through line 1 on page 133 and insert "estimate the private and public costs associated".

On page 133, strike lines 6 through 9 and insert the following:

(3) Evaluation of Other Federal Actions.—In addition to carrying out the requirements of paragraphs (1) and (2), the Administrator shall also estimate the private and public costs and benefits associated with selected major Federal actions chosen by the Administrator that have the most significant impact on human health or the environment, including the direct development

On page 138, line 4, strike "establish" and insert "establish, not later than 24 months after the date of enactment of this Act,".

On page 138, strike lines 18 through 21, and insert the following:

(a) DEFINITION OF PUBLIC WATER SYSTEM.—(1) The first sentence of section 1401(4) (42 U.S.C. 300f(4)) is amended by striking "piped water for human consumption" and inserting "water for human consumption through pipes or other constructed conveyances".

(2) Such section is further amended by adding at the end thereof the following: "A connection for residential use (drinking, bathing, cooking or other similar uses) or to a facility for similar uses to a water system that conveys water by means other than a pipe principally for purposes other than residential use (other purposes, including irrigation, stock watering, industrial use, or municipal source water prior to treatment) shall not be considered a connection for determining whether the system is a public water system under this title, if—

"(A) the Administrator or the State in which the residential use or facility is lo-

ated has identified any treatment or conditioning necessary to protect human health if the water is used for human consumption and the residential user of owner of the facility is employing such treatment or conditioning at the point of entry; or

"(B) the system certifies to the Administrator or the State that an alternative source of water for drinking and cooking is being provided to the residential users or using the facility.

An irrigation district in existence prior to May 18, 1994 that provides primarily agricultural service through a piped system with only incidental residential use shall not be considered a public water system, if the residential use complies with subparagraphs (A) and (B)."

(3) The provisions of this subsection shall take effect 1 year after the date of enactment.

On line 9 of Amendment No. 1709, strike "shall" and insert "may".

On page 143, after line 23, insert the following new subsection:

(I) PREVENTION AND CONTROL OF ZEBRA MUSSEL INFESTATION OF LAKE CHAMPLAIN.—

(1) FINDINGS.—Section 1002(a) of the Non-Indigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701(a)) is amended—

(A) by striking "and" at the end of paragraph (3);

(B) by striking the period at the end of paragraph (4) and inserting "; and"; and

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

"(5) the zebra mussel was discovered on Lake Champlain during 1993 and the opportunity exists to act quickly to establish zebra mussel controls before Lake Champlain is further infested and management costs escalate."

(2) EX OFFICIO MEMBERS OF AQUATIC NUISANCE SPECIES TASK FORCE.—Section 1201(c) of such Act (16 U.S.C. 4721(c)) is amended by inserting ", the Lake Champlain Basin Program," after "Great Lakes Commission".

(3) AQUATIC NUISANCE SPECIES PROGRAM.—Subsections (b)(6) and (i)(1) of section 1202 of such Act (16 U.S.C. 4722) is amended by inserting ", Lake Champlain," after "Great Lakes" each place it appears.

(4) AUTHORIZATION OF APPROPRIATIONS.—Section 1301(b) of such Act (16 U.S.C. 4741(b)) is amended—

(A) in paragraph (3), by inserting ", and the Lake Champlain Research Consortium," after "Laboratory"; and

(B) in paragraph (4)(A)—

(i) by inserting after "(33 U.S.C. 1121 et seq.)" the following: "and grants to colleges for the benefit of agriculture and the mechanic arts referred to in the first section of the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 322)"; and

(ii) by inserting "and the Lake Champlain basin" after "Great Lakes region".

**GORTON AMENDMENT NO. 1733**

Mr. CHAFEE (for Mr. GORTON) proposed an amendment to the bill S. 2019, supra, as follows:

On page 109, line 7, insert the following after "2000."

"If the Administrator makes a grant to a non-profit organization to provide technical assistance under this section, the Administrator shall assure that the program administered by the non-profit organization, in combination with other grants under this section, provides technical assistance among the States in an equitable manner. A non-

profit organization conducting any activities supported by a grant under this subsection, shall consult with the State agency having primary enforcement responsibility under section 1413 on the activities to be conducted in the State."

**HATCH AMENDMENT NO. 1734**

Mr. CHAFEE (for Mr. HATCH) proposed an amendment to the bill S. 2019, supra; as follows:

On page 124, after line 11, insert the following new paragraph:

**"(4) SCHEDULE OF INSPECTIONS.—**

**(A) IN GENERAL.—**The Administrator or authorized representative of the Administrator shall conduct inspections undertaken pursuant to this subsection during the normal operating hours of the establishment, facility, or other property.

**(B) SMALL SYSTEMS.—**(1) For a public water system serving a population of 3,300 or less, the Administrator or authorized representative of the Administrator shall, to the extent practicable—

(i) notify the person referred to in paragraph (1), at least 3 days before the inspection, of the time when the inspection is scheduled to occur, and

(ii) schedule the inspection at a mutually convenient time.

**(C) WAIVER.—**The Administrator or an authorized representative of the Administrator may waive the requirements of subparagraphs (A) or (B) if the Administrator or authorized representative of the Administrator determines that an immediate inspection may be necessary to protect public health."

**MITCHELL (AND OTHERS)  
AMENDMENT NO. 1735**

Mr. BUMPERS (for Mr. MITCHELL, for himself, Mr. BUMPERS, and Mr. BAUCUS) proposed an amendment to amendment No. 1729 proposed by Mr. DOLE to the bill S. 2019, supra; as follows:

Strike all after the first section heading and insert the following:

(a) **SHORT TITLE.—**This section may be cited as the "Private Property Rights Act of 1994".

(b) **FINDINGS.—**The Congress finds that—

(1) the protection of private property from a taking by the Government without just compensation is an integral protection for private citizens incorporated into the Constitution by the Fifth Amendment and made applicable to the States by the Fourteenth Amendment; and

(2) Federal agencies should take into consideration the impact of Governmental actions on the use and ownership of private property.

(c) **PURPOSE.—**The Congress, recognizing the important role that the use and ownership of private property plays in ensuring the economic and social well-being of the Nation, declares that the Federal Government should protect the health, safety, and welfare of the public and, in doing so, to the extent practicable, avoid takings of private property.

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

(1) the term "agency" means an Executive agency as defined under section 105 of title 5, United States Code, and—

(A) includes the United States Postal Service; and

(B) does not include the General Accounting Office; and

(2) the term "taking of private property" means any action whereby private property is taken in such a way as to require compensation under the Fifth Amendment to the United States Constitution.

**(e) PRIVATE PROPERTY TAKING IMPACT ANALYSIS.—**

(1) **IN GENERAL.—**The Congress authorizes and directs that, to the fullest extent possible—

(A) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies under this section; and

(B) all agencies of the Federal Government shall complete a private property taking impact analysis before issuing or promulgating any policy, regulation, proposed legislation, or related agency action which is likely to result in a taking of private property, except that—

(i) this subparagraph shall not apply to—

(I) an action in which the power of eminent domain is formally exercised;

(II) an action taken—

(aa) with respect to property held in trust by the United States; or

(bb) in preparation for, or in connection with, treaty negotiations with foreign nations;

(III) a law enforcement action; including seizure, for a violation of law, of property for forfeiture or as evidence in a criminal proceeding;

(IV) a study or similar effort or planning activity;

(V) a communication between an agency and a State or local land-use planning agency concerning a planned or proposed State or local activity that regulates private property, regardless of whether the communication is initiated by an agency or is undertaken in response to an invitation by the State or local authority;

(VI) the placement of a military facility or a military activity involving the use of solely Federal property; and

(VII) any military or foreign affairs function (including a procurement function under a military or foreign affairs function), but not including the civil works program of the Army Corps of Engineers; and

(ii) in a case in which there is an immediate threat to health or safety that constitutes an emergency requiring immediate response or the issuance of a regulation pursuant to section 553(b)(B) of title 5, United States Code, the taking impact analysis may be completed after the emergency action is carried out or the regulation is published.

(2) **CONTENT OF ANALYSIS.—**A private property taking impact analysis shall be a written statement that includes—

(A) the specific purpose of the policy, regulation, proposal, recommendation, or related agency action;

(B) an assessment of the likelihood that a taking a private property will occur under such policy, regulation, proposal, recommendation, or related agency action;

(C) an evaluation of whether such policy, regulation, proposal, recommendation, or related agency action is likely to require compensation to private property owners;

(D) alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur; and

(E) an estimate of the potential liability of the Federal Government if the Government is required to compensate a private property owner.

(3) **SUBMISSION TO OMB.—**Each agency shall provide an analysis required by this section as part of any submission otherwise required to be made to the Office of Management and Budget in conjunction with the proposed regulation.

**(f) GUIDANCE AND REPORTING REQUIREMENTS.—**

(1) **GUIDANCE.—**The Attorney General shall provide legal guidance in a timely manner, in response to a request by an agency, to assist the agency in complying with this section.

(2) **REPORTING.—**Not later than 1 year after the date of enactment of this Act and at the end of each 1-year period thereafter, each agency shall provide a report to the Director of the Office of Management and Budget and the Attorney General identifying each agency action that has resulted in the preparation of a taking impact analysis, the filing of a taking claim, or an award of compensation pursuant to the Just Compensation Clause of the Fifth Amendment to the Constitution. The Director of the Office of Management and Budget and the Attorney General shall publish in the Federal Register, on an annual basis, a compilation of the reports of all agencies made pursuant to this paragraph.

**(g) JUDICIAL REVIEW.—**

(1) **IN GENERAL.—**Subject to paragraph (2), nothing in this section shall create any right to administrative or judicial review, or any other right or benefit or trust responsibility, substantive or procedural, enforceable by a party at law or equity against the United States, an agency or instrumentality of the United States, an officer or employee of the United States, or any other person. If an agency action is subject to judicial or administrative review under any other provision of law, any alleged failure to comply with this section may not be used as a ground for affecting or invalidating the agency action.

(2) **CLAIMS FOR JUST COMPENSATION.—**Nothing in this section shall limit the right of any person to seek just compensation pursuant to the Fifth Amendment to the Constitution.

(h) **EFFECTIVE DATE.—**The provisions of this section shall take effect 1230 days after the date of the enactment of this Act.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. FORD. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on May 18, 1994, at 9:30 a.m. on S. 1822 and local competition/universal service.

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

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, 9:30 a.m., May 18, 1994, to consider pending calendar business.

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

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

Mr. FORD. Mr. President, I ask unanimous consent that the full Committee

on Environment and Public Works be authorized to meet during the session of the Senate on Wednesday, May 18, at 2 p.m., to conduct a business meeting to discuss the U.S. Army Corps of Engineers civil works program and its policies on recreation and environmental protection.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the Session of the Senate on Wednesday, May 18, at 2 p.m. to hold an ambassadorial nomination hearing on Mr. Timothy A. Chorba to be Ambassador to the Republic of Singapore.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Wednesday, May 18, at 10 a.m. to hold a nomination hearing on:

Ms. Jan Piercy, of Illinois, to be U.S. Executive Director of the International Bank for Reconstruction and Development; and

Ms. Sally A. Shelton, of Texas, to be an Assistant Administrator of the Agency for International Development.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet on May 18, 1994, at 8 a.m., to be reconvened in the afternoon, for an executive session to consider The Health Security Act.

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

ADDITIONAL STATEMENTS

CONVENTION ON THE RIGHTS OF THE CHILD

• Mr. LEAHY. Mr. President, I rise today to speak about an issue we all have a great interest in—ensuring the safety, well-being, and sound development of the world's children.

To help achieve that goal, over 4 years ago the United Nations signed the Convention on the Rights of the Child. After months of negotiation, the General Assembly approved the convention, a universal endorsement of the global responsibility to protect and nurture children.

It is a simple concept. Our children will one day be grown men and women. It is incumbent upon us to give the world's children the necessary tools to care for the world they will inherit from us. The convention aims not only

to make the world a better place for children, but also to enable our children to make the world a better place for their children.

To date, more than 170 countries have ratified the convention, showing their commitment to this simple concept. Only a handful of countries have not, among them Somalia, Iraq, and the United States. The administration, first under President Bush, and now President Clinton, has stalled the convention for 4 years, despite a Senate resolution calling on the President to submit it for ratification.

The administration's resistance is due to misunderstandings about the convention. Opponents claim that it is antifamily, or allows children to sue their parents, that it will overturn *Roe v. Wade*, or infringe upon States rights. The Convention on the Rights of the Child does none of these things.

It does create an internationally approved, minimum standard for protecting children from poverty, abuse, and cruel labor practices. It calls on nations to affirm the rights of children not to go hungry, to be educated, and to live without persecution on the basis of gender, race, religion or creed. In short, it provides a framework around which to build a safe, healthy, stable environment for our children's development. As the world's most powerful and wealthiest nation, these are standards that we should embrace.

Last year I and Senators BRADLEY, HATFIELD, and LUGAR again introduced a resolution asking President Clinton to submit the convention to the Senate for consideration. Since then, the resolution has gained more than fifty cosponsors. Yet many of my colleagues still have not decided whether to support this important measure.

There will be a briefing for Senate staff on Friday, May 20, from 10:00-11:30 in Hart 708, to answer questions regarding the convention's effect on Federal and State law. I encourage all Senate staff to attend what will be an extremely useful briefing. And I encourage my colleagues who have not done so to cosponsor Senate Resolution 70.●

TRIBUTE TO THE GAINES CENTER FOR HUMANITIES

• Mr. MCCONNELL. Mr. President, I rise today to honor the 10th anniversary of the Gaines Center for Humanities located on the University of Kentucky campus. The building has become both a distinctive and special feature of the school and was named in honor of Joan and John Gaines—two individuals who generously supported and encouraged funding for the humanities building's renovation.

The Gaines Center stands out as both an attractive and unique part of the university. The house itself has no classrooms, but small groups of students and faculty meet every day in

this informal setting. This educational environment lends itself to interdisciplinary seminars and experimental workshops that have defined the University of Kentucky's humanities program. The center has given students the opportunity to directly interact and debate with their teachers and fellow classmates.

The Gaines Center also awards ten fellowships each year, and a special faculty-initiated seminar is held every other year to provide 10 students with U.K. scholarships. In the coming academic year, the center is planning to grant more fellowships, and students will be able to receive a minor in the humanities.

I do not know of any other State university that has such a strong, personal, and widely appreciated humanities program. The renovation of the Gaines Center has given the University of Kentucky students the unique opportunity to receive a strong education in a very intimate and personal atmosphere. Only the students and faculty at the University of Kentucky can fully appreciate the Gaines Center's unusual qualities, yet we can all recognize the honor the center's distinctive academic program—particularly now when celebrating the building's 10th anniversary.

Ten years is not, of course, a long time in the life of an institution like the University of Kentucky. Nevertheless, the Gaines Center has accomplished more in 10 years than many programs accomplish in a lifetime. Mr. President, I commend the students and faculty at the Gaines Center, and I particularly commend Joan and John Gaines for their generous support and dedication to the humanities program at the University of Kentucky.

Please enter my comments, as well as an excerpt from the University of Kentucky alumni magazine, into today's RECORD.

The article follows:

[From the Kentucky Alumnus, Summer 1994]

(By Raymond F. Betts)

No other state university that I know of has such a program. Ours may even be, as indeed I think it is, the educational environment of the future, with small groups of students and faculty gathered in interdisciplinary seminars and experimental workshops, all the while testing ideas and engaging in debate, presenting and projecting concepts in notebooks and on computer screens. Certainly, the structure and scale of university education have drastically altered since Patterson Office Tower was thrust upward. "Informal and domestic" describe the reclaimed campus environment; "intense and far-ranging" describe the learning situation. The Gaines Center, celebrating these conditions, has no classrooms. Ours has moveable and arrangeable space, interiors where faculty members can casually say to students: "Pull up a chair," which is the proper greeting in any modern republic of letters.

My opinion of the unusual qualities of the Center has been confirmed many times over several years. After visiting here in 1991, Dr. W. Robert Connor, director of the National

Humanities Center in North Carolina, remarked: "But the Gaines Center was the surprise. I had little idea of what that phrase meant—the beauty of the house, the quality of the restoration, the good sense of focusing on students and their needs . . ."

Two of our current undergraduate fellows, Irene Hong and Steven Allen, recently offered the following statement: "In a large university such as UK, the Gaines Center provides a personal and intimate atmosphere. For all members of the UK community with hectic schedules, the Center offers an alternative—a place for reflection."

Now, with a well-established and widely appreciated academic program in place, with public service activities that reach across the state in influence, and with three well-appointed buildings that face the community, yet define the north end of campus, the Gaines Center is an exceptionally attractive part of the university. As I approach the buildings each day from the parking lot behind Memorial Coliseum, I think how fortunate I am to be able to enter such a place, to think, talk and write where purpose and proportion are so finely joined.

When, just over 10 years ago, Joan and John Gaines walked cautiously down the littered staircase of the state-of-ruin building that I hoped would be renovated, I moved along anxiously. The place was, at very best, an unsightly mess, victim of neglect and abuse. "It's beautiful, isn't it, John?" Joan remarked. John quickly agreed. I sighed in relief. With that particular vision which allowed the Gaines to imagine the building restored, they had already imagined the value of a special humanities program to the university. Their generous support, matched by large donations from Mary Bingham and Margrite Davis, has allowed the development of a diversified humanities program in what is an ideal academic setting. The Gaines Fellowship program awards 10 fellowships each year. A special faculty-initiated seminar, which provides 10 student scholarships is offered every other year and allows for the appearance on campus of an outstanding scholar whose public lectures are published through a joint venture with the University of Kentucky Press. Each semester, several undergraduate research assistant-ships are available to faculty members, an arrangement that allows the best of faculty-student scholarly engagement possible. This year, we are planning to increase the number of our fellowships, and we are also initiating an undergraduate minor in the humanities that is long overdue.

Were I given to what might be called "Scholstats," the academic arithmetic which lists statistics as measures of intellectual development, I think that I could prove our program one of the most successful in the university. But what really matters—and does not "count"—is the intellectual fervor that is generated in a seminar setting. I will never forget that one session when we were preparing to discuss the awesome, yet elusive, outer condition called "civilization." I brought in my favorite and long-enduring teaching "tool," a bag of blocks my older son had been given, many, many years ago. As I dumped the blocks on the table, I commanded the class, with a tenured professor's authority, "Now build me a civilization." For the next hour and a half, the students arranged the blocks which became temple, palace, treasury and monument, public highway and private walk, order, cleanliness and beauty (the last three being Freud's listing of what civilization is all about).

Nothing was resolved, no grand exclamation of consummatum est or "hurrah!" at

the end of the allotted seminar time. The seminar was over; however, the subject remained unsettled, to be further considered, to be reconsidered. Without bearing the label, our buildings are houses of provocation, places where the mind is stimulated, where our being, both individual and collective, is pondered. The humanities are profoundly concerned with three tenses of the verb "to be" expressed in the third person singular: has been, is, may be. We so tense up in our special fellowship seminar on Tuesday and Thursday between 5 p.m. and 6:30 p.m. each of the two semesters of the course. I cannot measure the success of our program in traditional administrative fashion, but I do know that what we attempt, student and teacher as scholars, is good because it is a serious effort to understand ourselves, to situate ourselves in an ever-changing context that is historical, philosophical and environmental.

One of the outstanding visitors we have had as a program participant at the Gaines Center is the naturalist writer Barry Lopez. In his essays, Lopez frequently states that he has turned, paused and wondered. He is a person not driven recklessly forward. When I stopped at the apartment in the Gaines Center to take him to the place of his lecture, he was standing in the living room and meditating. His was a humanistic stance, thoughtful reflection before presentation, consideration before commitment. How appropriate, I thought, in this place, for this program. I silently rejoiced that structure and purpose were consonant. I still do.

Ten years is not a long time in the life of an institution like a university, but it is the major mark of individual life: a decade. During this last decade, I have been privileged to serve as director of the Gaines Center. I have delighted in assisting with curricular development. I have been pleased with the well-designed growth of our physical space. I have enjoyed interviewing students for our fellowships and discussing our programs with faculty. None of these fulfilling and worthwhile activities has matched, however, that exceptional quality of intellectual engagement that comes from discussion with bright students seeking meaning.

Not too long ago, one of our Junior Fellows sent me an electronic mail message. The illuminated screen bore the words: "I have discovered the many meanings of the word 'kin.' It is a beautiful word. What do you think?" Simple and direct, sincere and anxious, inquisitive and alert, expressive of concern and wonder—that is the way I read the brief message. I pressed the "quit" key on our e-mail system. I only "quit" the message, not the question. "What do you think?" she had electronically inquired. I am still thinking about it. Anyone concerned with form, with memory, with value should continue to think about such a question. Anyone concerned with study of the humanities should. Housed within the three buildings of the Gaines Center for the Humanities are such thoughts and such concerns. They have been for 10 years now, and they will be for the many decades that will follow this, the very first one.●

#### SERVICE LIFE EXTENSION PROGRAM

● Mr. D'AMATO. Mr. President, the Navy has been quietly circulating a point paper on the proposed Service Life Extension Program [SLEP] Availability for the U.S.S. *America* (CV-66).

It makes for grim reading. The *America* "is at her naval architecture limits for displacement for hull strength and torpedo side protection." Her "hull plating thickness is thinner and stringer sizes are smaller than previous and later constructed CVs," and the hull itself is nonsymmetrical. This is outrageous. That we are putting our sailors at risk by keeping this ship at sea is wrong. Knowing the deficiencies of the *America*, the ship should be retired immediately.

Here's the weird part, though. The *America* is the last ship of her class, and the other two ships of her class, the *Kitty Hawk* and the *Constellation*, went through SLEP's that the Navy hailed as triumphs of costeffectiveness. Now, the last time I checked, sister ships were essentially similar ships built from the same general plans. That being so, you'd think that what was good for the goose would be good for the gander. But not according to the Navy.

Something just doesn't click. Prior to SLEP, were the *Kitty Hawk* and the *Constellation* at the limits for hull strength and torpedo side protection? If not, why the difference from the *America*? If so, how did each ship avoid the hull blister, hull strapping, and plate replacement required by the *America*? Why were the hull plating thickness and stringer sizes of the *Kitty Hawk* and the *Constellation* different from the *America*? Was the hull of the *Kitty Hawk* and the *Constellation* symmetrical? If not, how were complications avoided?

You can't have it both ways. Either the *America* is a heap that should be stricken from the rolls, or her SLEP would be no more costly or difficult than that of her sisters. If the *America* is a wreck, we should be investigating how she got that way. If the *America* is no worse than the *Kitty Hawk* of the *Constellation*, we should be investigating how the Navy came to the conclusions it did in its point paper.●

#### THE MONTEVIDEO NATIONAL GUARD TRAINING AND COMMUNITY CENTER

● Mr. DURENBERGER. Mr. President, this weekend, I will be joining Congressman MONTGOMERY, Congressman MINGE, and a number of other officials at the dedication of the Montevideo National Guard Training and Community Center in Montevideo, MN. This celebration marks the culmination of many years of hard work by community leaders to see this project become a reality.

I am especially pleased that the distinguished chairman of the House Committee on Veterans' Affairs, SONNY MONTGOMERY, will be the featured guest at the dedication, having taken a personal interest in this armory and the partnership it represents. I am very

grateful to him for his involvement in this project, as well as his tireless efforts on behalf of our Nation's veterans.

About 12 years ago, Arnie Anderson, a friend of mine from Montevideo, recognized the need for a new National Guard armory in that community. The old Montevideo Armory was constructed in 1921, and had fallen into disrepair over the years. Unfortunately, about 3 years ago, the funding request for the new armory was denied.

Vin Weber, the congressman representing Minnesota's Second District at the time, Rudy Boschwitz, my Minnesota colleague in the Senate, and I continued to work together with Arnie, Maj. Gen. Eugene Androetti, the Adjutant General of the Minnesota National Guard, and other community and State leaders to ensure that this vision for a new community center in Montevideo would come to pass.

One of the reasons we believed so strongly in this project, Mr. President, is that this armory is not a typical armory. Its construction is the result of a unique cooperative funding formula between the city, the county, the Federal Government, and the school. The building is situated near—and connected by corridor to—the Montevideo Senior High School. There are six classrooms that can be used as the high school needs them, and the drill floor is used by the students for athletic activities. The kitchen is large enough to cater to various community events, with enough room on the floor to accommodate 800 people.

Another reason for our commitment to this center was the men and women of the Minnesota National Guard unit in Montevideo who so desperately needed a new facility. The local unit is the 151st Battalion—part of the 34th Infantry Division, which has the longest combat record in military history. The members of the 151st have consistently demonstrated their strong commitment to their Nation and their community and have a proud history—both in combat and in coping with natural disasters.

After many years of hard work and tireless efforts by many individuals, this community center has become a

reality. Last spring, construction of the center began, and the unit moved into the building the end of March, 1994. Already, the armory has lived up to its name as a community center. Every evening and every weekend the facility is in use, filled with trade shows, machinery shows, and banquets.

In closing, I want to pay special tribute to all those in the Montevideo community and those in the Minnesota National Guard leadership who never gave up on this vision, especially Arnie Anderson. I believe that when the history of the 20th Century in Montevideo is written, people will read that it was Arnold Anderson who contributed most significantly to the well-being and the quality of life in this community and this region. A retired brigadier general, he served his country with honor and distinction. And he has served his hometown with his heart and soul. From libraries to the railroad; from a community center to fine art exhibits; Arnie has put his imprint on this community with his love and care.

Mr. President, I have a feeling that over the next 50 or more years, the Montevideo National Guard Training and Community Center is going to be the birthplace of many happy memories as a place where the community comes together. ♦

#### ORDERS FOR TOMORROW

Mr. FORD, Madam President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Thursday, May 19; that following the prayer, the Journal of proceedings be deemed approved to date and the time for the two leaders reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each; with the following Senators recognized for the time limits specified: Senator LIEBERMAN for up to 5 minutes; Senators KERRY, GRAHAM, and BRADLEY for up to 15 minutes each; that at 10:30 a.m., the Senate resume consideration of S. 2019 and vote on final passage, as provided for under the

provisions of a previous consent agreement; further that following the roll-call vote at 10:30 a.m., that no other rollcall votes occur prior to 6:30 p.m., Thursday.

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

#### RECESS UNTIL TOMORROW AT 9 A.M.

Mr. FORD, Madam President, if there is no further business to come before the Senate today, and I see no other Senator seeking recognition, I now ask unanimous consent that the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 7:31 p.m., recessed until tomorrow, Thursday, May 19, 1994, at 9 a.m.

#### NOMINATIONS

Executive nominations received by the Senate May 18, 1994:

##### DEPARTMENT OF STATE

RAYMOND EDWIN MABUS, JR., OF MISSISSIPPI, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KINGDOM OF SAUDI ARABIA.

##### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

PAUL STEVEN MILLER, OF CALIFORNIA, TO BE A MEMBER OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION FOR A TERM EXPIRING JULY 1, 1998, VICE JOY CHERIAN, RESIGNED.

##### DEPARTMENT OF JUSTICE

JOHN W. CALDWELL, OF GEORGIA, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS, VICE JIMMY C. CARTER.

ROBERT HENRY MCMICHAEL, OF GEORGIA, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF GEORGIA FOR THE TERM OF 4 YEARS, VICE LYNN H. DUNCAN.

ROY ALLEN SMITH, OF OHIO, TO BE U.S. MARSHAL FOR THE SOUTHERN DISTRICT OF OHIO FOR THE TERM OF 4 YEARS, VICE ROBERT W. FOSTER.

DAVID WILLIAM TROUTMAN, OF OHIO, TO BE U.S. MARSHAL FOR THE NORTHERN DISTRICT OF OHIO FOR THE TERM OF 4 YEARS, VICE ALBERT Z. MOORE.

##### IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

##### To be lieutenant general

MAJ. GEN. PAUL E. BLACKWELL, 249-66-6308

##### IN THE NAVY

THE FOLLOWING-NAMED OFFICER FOR REAPPOINTMENT 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

VICE ADM. DOUGLAS J. KATZ, 234-66-9718