SENATE—*Wednesday, May 10, 1995*

(Legislative day of Monday, May 1, 1995)

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

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Let us pray:

God is able to make all grace abound toward you, that you, always having all sufficiency in all things, may have an abundance for every good work.—II Corinthians 9:8.

Gracious Father, we claim this Biblical promise as we begin this new day. We thank You for Your amazing grace, Your unqualified love, and forgiveness that flows from Your heart into our hearts filling up our diminished reserves. We are energized by the realization that You have chosen to be our God and have chosen us to belong first and foremost to You. So we clarify our priorities and commit ourselves to seek first Your will and put that above all else. It is liberating to know that You will supply all we need, in all sufficiency, to discern and do what glorifies You. Grant us wisdom, Lord, for the decisions of this day.

We ask this not for our own personal success but for our beloved Nation. America deserves the very best from us today. Experience has taught us that You alone can empower us to be the leaders America needs. Fill us with a new passion for patriotism and fresh commitment for the responsibilities of leadership You have entrusted to us.

In the name of Him who helps us live every day to the fullest. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. GORTON. Mr. President, this morning the leader time has been reserved and the Senate will resume consideration of H.R. 956, the product liability bill.

Under the provisions of the agreement reached last night, there will be at least two rollcall votes beginning at 9:45 this morning on or in relation to amendments to the substitute amendment. Further rollcall votes are expected following the 9:45 a.m. stacked votes, and a vote on final passage can be expected at about 11:30 this morning.

Senators should also be aware that the Senate will begin consideration of the solid waste disposal bill at noon.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The PRESIDING OFFICER (Mr. CAMPBELL). The Senate will resume consideration of H.R. 956, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Gorton amendment No. 596, in the nature of a substitute.

Coverdell-Dole amendment No. 690 (to amendment No. 596), in the nature of a substitute.

Shelby-Heflin modified amendment No. 693 (to amendment No. 690), to provide that a defendant may be liable for certain damages if the alleged harm to a claimant is death and certain damages are provided for under State law.

Harkin amendment No. 749 (to amendment No. 690), to adjust the limitation on punitive damages that may be awarded against certain defendants.

Mr. GORTON. Mr. President, as I have just announced on behalf of the majority leader, we will have two votes in about 10 minutes. Seeing nobody here at the moment to speak, 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. SHELBY. 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. 693, AS FURTHER MODIFIED, TO AMENDMENT NO. 596

Mr. SHELBY. Mr. President, I ask unanimous consent that I be allowed to amend the Shelby-Heflin amendment, which is slated to be voted on in a few minutes, by inserting at the end of the amendment: "This paragraph shall cease to be effective September 1, 1996."

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

The amendment (No. 693), as further modified, is as follows:

At the appropriate place insert the following:

SEC. . LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107 but only during such time as the State law so provides. This paragraph shall cease to be effective September 1, 1996.

Mr. GORTON. Mr. President, this is now a reasonable amendment. There was a debate on the Shelby-Heflin amendment yesterday to which I had certain objections, but it is clear that the law of Alabama is unique and peculiar.

I think it can easily be amended, and the two Senators from Alabama will want to give the Alabama Legislature sufficient time to consider that amendment. I think that is appropriate, and I believe that we can now accept the Shelby-Heflin amendment by voice vote. Assuming that we do so, Mr. President, there will only be one vote at 9:45.

The PRESIDING OFFICER. The question is on agreeing to the amendment, as further modified.

So the amendment (No. 693), as further modified, was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. HEFLIN. Mr. President, I have reservations about this in regard to what has occurred, but I am faced with reality, the reality of votes, and the reality of conference.

Senator SHELBY and I, therefore, are approaching this issue from a pragmatic, not philosophical, viewpoint. I just want to make that clear.

Mr. SHELBY. Mr. President, regarding the amendment we have worked out and that has been voted on, I agree with the senior Senator from Alabama. We can both count. We were counting votes and we were looking reality in the face.

Our State of Alabama is unique among the 50 States in that, as I have said before on the floor, we have had a wrongful death statute that assesses punitive damages only where someone is killed and there is a civil action because of the death. Most States in the Union—I guess all of them except Alabama—have compensatory damages.

If I had my "druthers," I would leave this like it was or like it is today, but this will give the Alabama Legislature until September 12, 1996, to consider changing it, if this proposed legislation were to become law.

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

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

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The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

VOTE ON MOTION TO TABLE AMENDMENT NO. 749

The PRESIDING OFFICER. Under the previous order, the question occurs on amendment No. 749, offered by the Senator from Iowa [Mr. HARKIN].

Mr. GORTON. I move to table the Harkin 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.

The PRESIDING OFFICER. The question is on agreeing to the motion to table.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

The PRESIDING OFFICER (Mr. BURNS). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 78, nays 20, as follows:

[Rollcall Vote No. 159 Leg.]

YEAS—78

Abraham	Feinstein	Mack
Ashcroft	Ford	McCain
Bennett	Frist	McConnell
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Bradley	Gramm	Murray
Breaux	Grams	Nickles
Brown	Grassley	Nunn
Bryan	Gregg	Packwood
Burns	Hatfield	Pell
Campbell	Heflin	Pressler
Chafee	Helms	Pryor
Coats	Hutchison	Robb
Cochran	Inhofe	Rockefeller
Cohen	Jeffords	Roth
Coverdell	Johnston	Santorum
Craig	Kassebaum	Simon
D'Amato	Kempthorne	Simpson
DeWine	Kerrey	Smith
Dodd	Kerry	Snowe
Dole	Kohl	Specter
Domenici	Kyl	Stevens
Exon	Lautenberg	Thomas
Faircloth	Lott	Thompson
Feingold	Lugar	Thurmond

NAYS—20

Akaka	Dorgan	Levin
Baucus	Harkin	Mikulski
Boxer	Hatch	Reid
Bumpers	Hollings	Sarbanes
Byrd	Inouye	Shelby
Conrad	Kennedy	Wellstone
Daschle	Leahy	

NOT VOTING—2

Lieberman	Warner

So the motion to lay on the table the amendment (No. 749) was agreed to.

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

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

The motion to lay on the table was agreed to.

(Later the following occurred.)

CHANGE OF VOTE

Mr. PACKWOOD. Mr. President, on rollcall vote 159 I voted "no." It was my intention to vote "yea." I ask unanimous consent I be permitted to change my vote. This will in no way change the outcome of the vote.

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

(The foregoing tally has been changed to reflect the above order.)

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 629 TO AMENDMENT NO. 690, AS AMENDED

(Purpose: To eliminate caps on punitive damage awards)

Mr. DORGAN. Mr. President, I would like to offer amendment No. 629. The amendment is at the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 629 to amendment No. 690, as amended:

The amendment is as follows:

Insert at the appropriate place: "Notwithstanding any other provision of this Act, nothing in this Act shall impose limitations on punitive damage awards."

Mr. DORGAN. Mr. President, the amendment which I have offered is not identical but nearly identical to the amendment I offered prior to cloture. The amendment deals with the punitive damage cap. The amendment I offered previously I offered to the Dole substitute. I now offer this amendment to the underlying bill.

Very simply, my amendment would remove the cap on punitive damages that exists in the bill. The amendment that I offered previously was defeated by a vote of 51 to 49. I would like for the Senate to express itself on that issue in light of the activities on this legislation since the Senate voted on it. While I think there is merit in a product liability reform bill and while I think there is merit on both sides of this issue, I believe the legislation should be like the legislation on product liability we considered last year. That legislation came to the floor of the Senate and was voted on with respect to the last cloture vote without any cap on punitive damages.

Last year, the bill that originated in the Commerce Committee and brought to the floor, did not include a cap on punitive damages. This year, the legislation, as it emerged in the Commerce Committee by the same authors, included a cap on punitive damages. I believe they were right last year and wrong this year on that particular section of the bill.

I believe some reform necessary in this area, but I believe their best impulses and best instincts last year served them better than this year when they decided to impose an arbitrary cap on punitive damages.

After all, the legislation requires you to provide clear and convincing evidence as a burden of proof that the harm caused was carried out with a—let me quote this—"conscious and flagrant indifference to the safety of others." If a plaintiff has gone through trial and provided clear and convincing evidence that harm was caused or carried out with a conscious and flagrant indifference to the safety of others, then I do not understand why someone would suggest we ought to have a cap on punitive damages.

The legislation that is before us contains a cap on punitive damages in several different steps. It is, as I understand it, two times compensatory damages to a maximum of $250,000, a distinction from that particular cap for small businesses, certain designated small businesses in the bill, and, third, a provision that a judge could increase the punitive damage award upon a petition by the plaintiff. That is my understanding of what is in the legislation that is before the Senate. My amendment says, notwithstanding any other provision of this act, nothing in this act shall impose limitations on punitive damage awards.

Again and finally, let me say that this is the same position Senator ROCKEFELLER and Senator GORTON had last year, no cap on punitive damages. And I think it is appropriate. The reason I think it is appropriate is we have changed the bar that you must get over in order to prove punitive damages. It requires clear and convincing evidence that the harm caused was carried out with conscious and flagrant indifference to the safety of others.

I just do not understand how, if you meet that burden of proof and demonstrate conscious and flagrant indifference to the safety of others, you can say to a corporation worth several billions of dollars, it would cost less to pay awards than it would to fix the problems. A punitive damages cap is appropriate. I really believe the Senate would improve this legislation by adopting the very position the two managers of the bill had last year. Their first and best instinct was not to have a punitive damages cap then. I believe that is the position the Senate ought to adopt now.

Mr. President, with that, I would hope, when we have another vote on this, the Senate will decide to eliminate the punitive damages cap. With that, I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, unlike the situation at the time at which the Senator from North Dakota presented this amendment a week or so ago, we now have a bill in the Chamber in which there is no cap on punitive damages. I say that not in triumph but in regret. I believe that one of the great vices at which legislation of this sort properly should be aimed is at creating some kind of relationship between the actual damages caused by a tort, caused by a wrong, and the damages that can be recovered as a result. But with the latest set of amendments here, we have permitted a judge on certain findings of egregious conduct to go beyond what juries are permitted successfully to impose in the way of punitive damages.

The entire matter, Mr. President, is at one level an argument on philosophy but at another level it is a debate about the Constitution of the United States. The Supreme Court in several recent cases, while not setting a specific ceiling or cap on punitive damages itself, has spoken of serious constitutional questions caused by unlimited punitive damages, or by punitive damages that are not related in any rational fashion to actual damages found by a jury or determined by a court.

In other words, the Supreme Court of the United States has invited the Congress to do exactly what I had hoped we would do more successfully than we have accomplished in this bill.

But just to go over it again, we have said that the maximum punitive damages that can effectively be awarded by a jury are in an amount twice the total of all economic damages and all noneconomic damages that go for pain and suffering. And since those damages, in very serious cases of people being maimed for life, can well go into eight figures, and sometimes do, we have a very large potential remaining for punitive damages. But in addition to that provision, in the so-called Snowe amendment is a $250,000 figure when twice the total of economic and noneconomic damages would be less than $250,000, together with the right of a judge to go beyond even the Snowe formula where the judge feels that formula to be too limited not to permit proper punitive damages for particularly egregious conduct.

So the Senator from North Dakota, in a number of respects, has already succeeded. There is no number. There is no specific formula which limits punitive damages.

As I have said frequently, I think there should be. Working with the laws of my own State and a handful of other States where punitive damages are not allowed at all, where the cap is zero in most cases, we find no difference in the safety or carefulness of business enterprises in those States. No case has been proven for the efficacy of punitive damages as a deterrent, in any event. My own view is that the original limitation in this bill was an appropriate one, but that original limitation has twice been liberalized in the course of this debate. And I express the fervent hope that in concerning ourselves with the proposition that we should not permit absolutely unlimited discretion on the part of juries, we should not have no maximum sentence in civil cases for wrongs, that we will make the partial and halting move toward some kind of rationalization which is now contained in this bill.

Mr. President, we are in a peculiar situation here this morning in that we have a potential of this amendment and one other to be dealt with and we do not have specific limitations on the amount of time that can be utilized for them. So I hope that, when either the Senator from West Virginia or the Senator from North Dakota next speaks, we can get an indication as to when they will finish to allow the other amendment to take place. There will be votes on any other amendments which come up, but we will be asking unanimous consent that those votes take place after closing arguments and before the vote on final passage. So the sooner we know how long these two amendments will be debated, the earlier we will be able to predict to our Senators who are not here when they will have to come back to the floor to vote.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, a couple of points. I agree with what the Senator from the State of Washington said in argument to this amendment.

Just for the edification of my colleagues—this fact has not been brought out, I do not believe, in the debate—we have removed caps, but people do not realize, I think, often that there are caps on some rather extraordinary crimes in the Federal statutes. I will give some examples.

Many Federal criminal fines, even for particularly egregious crimes, do not exceed $250,000. And that was our original proposal, economic damages times three or $250,000, whichever is greater.

Listen to this. If you tamper with consumer products and it results in death, the Federal statute limitation is $100,000 for punitive damages. If you retaliate against a witness, it is $250,000. If you assault the President, it is $10,000. If you rob a bank with the use of a deadly weapon, the punitive damage limit cap is $10,000. Sexual exploitation of children for an individual, $100,000; in terms of an organization—however that would work out—$200,000. For treason—for treason—$10,000.

Now I say that in no way to defend caps, because the Senator from West Virginia has fought for the removal of caps and we have, I believe, been able to do that.

I would, in closing, remind my esteemed friend and colleague from the State of North Dakota, who is as principled a person as I have ever met, that the Senator from the State of Washington and I have so bloodied ourselves in making sure we come back with effective removal of caps that we have said, and that we have been unable to obtain unanimous consent in this body to, in effect, make the cap total and complete because of a matter of 60 seconds in filing the amendment, that if we bring back the amendment with anything but the cap removed, that we will vote against the motion for cloture should there be a filibuster on the conference report.

So I really do believe that we are operating not only in good faith but in good substance on removal of the cap. I hope, therefore, that what I consider a redundant amendment by the Senator from North Dakota would be defeated.

I thank the Chair and yield the floor.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I shall not prolong the debate. When I have completed with my remarks, I see no reason that you could not enter a unanimous-consent request to have a vote. I have no objection to a vote.

First, let me make a couple of comments. The Senator from Washington said, and I think the Senator from West Virginia also seemed to say, the way the bill is constructed, there really are not caps on punitive damage awards. If that, in fact, is the case, then I would think that they would have no objection to accepting language that says there are no caps on punitive damage awards. That is what my amendment says.

That was the Commerce Committee position last year on this bill. It was the right position. We raised the bar on what you must prove to receive a punitive damage award. Once we raised the bar, we felt it inappropriate to include caps. Now this year they want to include caps.

When the two Senators say there are not really caps, I understand what they are referencing. But, honestly, I think the claimants will find there are caps. There is $250,000 written in. That is written there for a reason. Because, under ordinary circumstances, that will be a cap, two times compensatory damages.

Let me make two other quick points.

Mr. ROCKEFELLER. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. ROCKEFELLER. Just as a point of clarification, the reason that the $250,000 was put in there in its new configuration was not in terms of the caps. We made certain that there was an alternate ceiling. So that if the economic

damages and the noneconomic damages did not appear to arrive at $250,000 multiplied by two, that the claimant would be guaranteed the $250,000. It is an alternate ceiling.

Mr. DORGAN. If the Senators were building a floor rather than creating a cap, I say, God bless the floor and let us just get rid of the cap. Let us vote for my amendment and we will solve this.

But, let me make two other comments. First, if a company, a large company with vast resources, produces a product or a device that will be used in the field of medicine discovers, during its testing, the product is sufficiently faulty in its operation and it may cause some deaths; if the company fails to disclose that information and the product goes to market and some unsuspecting patient lies on a hospital gurney going into the operating room and dies during a routine procedure and later the family discovers that person died because the product used was faulty and the company knew it, I suppose they would want to bring a lawsuit against the company. In that case, I think society would want that company to be punished sufficiently so that other companies would understand you cannot do that, that kills people; you ought to be punished for it. You ought not get a slap on the wrist, you ought to be punished for it.

That is what punitive damage awards are for. The case I just mentioned is a real case, and there are plenty of cases like that.

There is not an epidemic of punitive damage awards in this country. It happens rarely because it requires a substantial burden of proof, and we have increased that burden. There is no litigation crisis with respect to punitive damages. In 25 years, the survey that I have seen—1965 to 1990—says that 355 punitive damages were awarded in State and Federal product liability lawsuits nationwide. This is a country of 250 million people; 355 punitive damage awards nationwide. Of those awards, 35 are larger than $10 million. All but one of these awards were reduced, and 11 of the 35 were reduced to zero.

The point I make is, this is not an epidemic or crisis. Punitive damage awards have not been escalating out of control. But I do think there are certain circumstances where an enterprise worth billions makes a conscious decision that we will risk whatever awards exist out there because we will gain more profit by selling this, knowing the defects, than we will risk paying the damages to someone injured or killed by that product.

My own view is that there is merit on both sides of the debate on product liability. That is why I have decided to support and have supported moving forward, increasing the standards, trying to shut down some of the litigation in this country, because there is too much frivolous litigation, as a matter of fact. The country is just prone to litigate almost everything. We have too many lawyers in America. And we keep training more and more every year.

I think there is merit to the position of the two Senators, that we ought to do something in a reasonable way on product liability. I think there is no merit to putting a cap on punitive damages. There was not merit to it last year. They did not have it in the bill last year. They changed their minds. Their first instinct is correct. Always stick with your first instinct. My amendment will allow us to stick with your first instinct. If the Senate agrees, we will live with your victory of last year deciding there shall not be punitive damages in the product liability bill.

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

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Very briefly, Mr. President, I think that Members should know that this amendment by the Senator from North Dakota is all-encompassing and that it overrides the amendment which was supported by the vast majority of Members of the Senate that does have strict limits on punitive damages in cases involving small businesses, businesses with fewer than 25 employees and individuals of relatively modest means whose total assets are less than half a million dollars.

So they, after having been the beneficiary of the last week of that very careful protection, protection against absolute bankruptcy, should the Dorgan amendment be adopted, they will be thrown into a situation in which absolutely unlimited punitive damages can be awarded against them. It is important for Members to understand that.

UNANIMOUS CONSENT AGREEMENT

Mr. GORTON. With that, Mr. President, now having cleared this with the Democratic side, I ask unanimous consent that the vote on, or in relation to, the Dorgan amendment, or in relation to any other amendment in order, and final passage occur back to back at the conclusion of the previously allotted time with the first vote limited to 15 minutes and the other consecutive votes in the voting sequence limited to 10 minutes each.

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

Mr. DORGAN. Mr. President, I was going to ask for the yeas and nays.

Mr. GORTON. I move to table the Dorgan amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise to speak against passage of this bill. I realize that, with cloture having been invoked, my words may not change many votes, but maybe they might change one or two. And then I feel like maybe my remarks, in a strong adversarial posture, might appeal to the reason of Senators to encourage them to eliminate some of the grossly unfair provisions that are in this bill.

I might say in the beginning that I believe the difference between the caps that are put in this bill and the fact that there were no caps in the last bill reflects a change in the makeup of the Senate, as a result of last November's elections.

There are caps in this bill with an additur provision whereby a judge could increase a jury's award of punitive damages. Clearly, that has already been ruled on by the Supreme Court as being unconstitutional. The case of Dimick versus Schiedt was decided in 1935 on that issue and makes the additur provision unconstitutional.

In my judgment, there are a number of other unconstitutional elements that should be pointed out. One is the matter pertaining to the role of the U.S. circuit courts of appeal being able to determine controlling precedent on the State courts within the jurisdiction of the Federal circuit.

Article III of section 1 of the Constitution, which provides that the judicial power of the United States shall be vested in one Supreme Court, has been construed to mean that the State courts must follow the decision of the Supreme Court and not the lower Federal courts.

The case of Erie versus Tompkins basically says that the Federal courts, in diversity cases, shall follow the substantive law of the State. There is no question that the Federal courts, through its rulemaking process and Congress, pursuant to its powers under the Rules Enabling Act, control in regards to procedural matters. I just want to mention that.

I want to direct the Senate's attention to a chart that Senator LEVIN produced and used in a previous argument. I thought it was an excellent presentation, and I ask unanimous consent that this table be printed in the RECORD.

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

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed.

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED—Continued

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Alcohol or drug abuse defense	do	Do.
Misuse or alteration of product defense	do	Do.
Punitive damage limitations	do	Do.
Statute of limitations	do	Prohibited.
Statute of repose	do	Allowed.
Joint and several liability (non-economic damages).	do	Do.
Biomaterials provisions	do	Do.

Mr. HEFLIN. Mr. President, this is chart entitled "Preemption of State Product Liability Laws," and it has a column of State laws more favorable to plaintiffs and State laws more favorable to defendants and what happens as regards preemption under this legislation. First as to the liability of product sellers, that is retailers, this bill prohibits any laws more favorable to plaintiff, but it allows laws more favorable to the defendants. Second, with respect to the alcohol or drug abuse defense, the bill prohibits State laws more favorable to plaintiffs but it allows State laws more favorable to defendants. Third, as to the misuse or alteration of product defense, the bill prohibits State laws more favorable to plaintiffs but allows State laws more favorable to defendants.

Punitive damage limitations are treated the same way—unfavorable as to plaintiffs and favorable as to defendants. As to the statutes of limitations, that is the one and only provision that really exists in this whole bill is as to uniformity.

With regard to the statute of repose provision of 20 years, this bill preempts State laws more favorable to plaintiffs but not those State laws more favorable to defendants.

On the issue of eliminating joint and several liability for noneconomic damages, this bill preempts State laws which are more favorable to plaintiffs but allow State laws which are more favorable to defendants. And you have the biomaterials provisions which are treated in the same manner. I think this chart Senator LEVIN prepared is a very excellent chart, and I hope my colleagues will take time to reflect upon it.

Now, I want to also direct my colleagues attention to the potential costs of the bill, an issue which I hope will be investigated, because I do not believe CBO or anyone else has looked at this matter very closely. There is language in the bill that includes within the scope of the word "claimant" a governmental entity which includes the Federal Government and all of its entities.

I do not think there is any question that the purpose of this bill is to save product manufacturers money. The Government, as a claimant, would be bringing suit against a defendant, and if the purpose of the bill is to save money, it means it saves money for the defendant, for corporate America, when the Federal Government brings suit.

So the cost to the Government has never been calculated, and there are so many things that are involved, particularly like the statute of limitations and statute of repose as to helicopters, tanks, NASA equipment, and all of GSA's equipment, and every conceivable way regarding which products are purchased by the Government. The issue of costs to the Government ought to be looked at more closely in my judgment.

Now, there is also a provision dealing with foreign nationals and foreign governments, and I realize that this is under statutory construction, that nothing in this title can be construed to preempt State choice of law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation and, in effect, the right of any court to transfer venue, or to apply the law of a foreign nation, or to dismiss a claim of a foreign nation, or of a citizen of a foreign nation, on the grounds of inconvenient forum.

In the world of terrorism today, these issues ought to be addressed. Hopefully, in the terrorist bill that will come before the Senate in the coming weeks, we will give some consideration regarding this issue. The Senate ought to make certain that the provisions of this product liability bill do not in some unintended way give some advantage to a terrorist entity.

I think one of the most unfair provisions in this legislation is the provision that says that an injured party cannot introduce in the compensatory damage part of a trial elements of conduct that constitute a cause of action for punitive damages. Therefore, as I have pointed out before, gross negligence, recklessness, wantonness, intentional conduct, and all activity of a similar nature, is prohibited from being considered in the main trial for compensatory damages. To me, that is one of the most unfair provisions that exist in this bill.

The biomaterials section and the definition of implants therein, where there is language regarding coming in contact through a surgically produced opening and coming in contact with bodily fluids or tissue, in my judgment, is a wide-open situation for a great deal of problems pertaining to component parts of the implant, and I urge that that be carefully reviewed.

Some of these issues which I have just reviewed—and I hope some people in the White House are listening to me as I speak about this—ought to be carefully considered not only by the Department of Justice and every agency of Government that could be affected. Certainly, the FDA ought to consider the language that is being placed into this bill as to matters dealing with the human body in that biomaterial definition of "loss."

Of course, the very basic unfairness of the bill begins with the fact that commercial loss, which is a business loss, is excluded from being within the purview of this bill.

Of course, I have given illustrations on the floor about the fact that if a factory blows up and people that are injured from the faulty, defective product, they come under this bill; but for commercial law, they do not.

Some say the commercial loss exemption might be applied to individuals. I remember there was a "Dear Colleague" letter circulated on this issue. I would imagine in that instance we would find it would be rarely ever used, we might find out of 2,000 employees in a factory where a boiler blows up, we might find that there might be one moonlighting sock salesman. That would be the only way that we would have, basically, any commercial loss that would occur to that individual.

Now, most of all of the business litigation and most of the punitive damages awards that have come about are business or commercial losses. The case of Pennzoil versus Texaco was, for example, probably the largest punitive damages case that has ever been awarded, and it was a commercial litigation where business was suing other business.

There are other provisions throughout the bill that are very unfair, and I have listed them in previous arguments. I hope that this bill will be carefully reviewed in conference and we will see the removal of a great number unwise provisions.

I just appeal to the conscience of the people that are involved who will be in conference on this, and appeal to the White House to look at this matter when it reaches conference between the House and Senate. It just shocks the conscience to see the unfairness that exists in all the various provisions of this bill and I hope that I have pointed out the key issue very clearly for my colleagues to consider. Mr. President, I urge that we vote no on final passage.

Mr. ROCKEFELLER. Mr. President, I encourage my colleagues would vote aye on this bill.

Mr. President, while I had my doubts, I have believed for a long time that the Senate would eventually come to this point. Inexorably, it would happen. After many years of debate, many years of filibusters on this Senate floor, this body finally has a chance to cast its vote for what I think is responsible, balanced punitive damages tort reform.

I think the vote yesterday was historic. The Senate, for the first time, broke the log jam that has blocked action on what I referred to last night as a deadly serious issue, and the Senate has blocked that for years and years. Now the Senate has said, "proceed."

My belief that this time would come is based on several points. First and

foremost, the problems with our punitive damages system cry out for solutions. We are here for that purpose. We were elected to address the problems that require attention and action. We have done so to the best of our ability.

In this case, because products by definition, virtually, involve interstate commerce—that point has been made but not accepted, I suppose, by all—70 percent of everything we make in West Virginia is sold in another State. By definition, States cannot preoccupy this field. This is precisely an area where Congress needs to step in.

Each State really cannot fix the flaws of the country's interstate product liability system. That is because the biggest problem involves the patchwork—varied, unpredictable nature—of every State in the union having different product liability rules and standards.

Businesses that sell or manufacture products are subject to the endless confusion, the hassle, the court costs, the wasteful costs, in general, of this maze.

Consumers who want safe products want more products that will increase their safety and cannot get them. Consumers who are victims of defective products and cannot get recompensed for an average of 3 years, are also hurt by the delays and the costs that stem from the product liability system. So businesses hurt, consumers are hurt. We have a problem.

My interest in these problems really stem from seeing the way they hurt my own State of West Virginia. Manufacturers, small businesses, the fear, consumers, workers, and the victims of defective products.

The Senator from North Dakota several moments ago said that there has only been *x* numbers of liability cases in the last 2 years, 10 years whatever. That argument has been used many, many times. It is a very misleading, false argument. It is not the number of punitive damages awards that have been granted. It is the threat which exists in every case, in every suit, of which there are unending numbers in this litigious society.

It is the threat of litigation that is the problem and has crushed so much innovation and research and development which would help consumers.

My interest, again, in West Virginia comes from knowing people who directly have suffered from this and have gone out of business from this, as well as victims who have been hurt by this. I have seen the victims who came back from the Persian Gulf war with something called a mystery syndrome illness which the Defense Department says does not exist, but I see these people and I know it does exist.

When we see the people, and we see the individuals and we see they are hurt, we want to help them. To put it simply, then, the product liability system is broken. The Congress and the President must have parity.

Second, I have believed that a product liability reform bill would eventually pass this Senate because of the way some Members have approached the effort to cause it to pass, which I believe it will.

Members of both sides of the aisle have been troubled by the problems with product liability. Some time ago the bipartisan team work necessary to enact legislation began to form. In the past 4 years, the Senator from the State of Washington and I have had the job of leading that team. The Senator from Washington and I made a pact: To promote a balanced, moderate, serious, legislative remedy to these problems in product liability, tort reform.

We let the businesses interested in reform know that the consumers and victims had to be the winners of reform, too. We made that very clear and have made that very clear up until the very last moments. We have kept making it clear.

We explained to the general public that the harm done to business by the problems with product liability also hurt the general public, which is called the rest of the country. They cost jobs, they stifle the innovation needed to make safer drugs and products, and they impose an enormous hidden tax on every American.

That is why we devised a bill to deal with the range of problems that affect different sectors of the society, and we did it fairly. In this legislation we promote quicker settlements through alternative dispute resolution. We insisted on that so victims get compensation faster. We give the victims of harm done by substances like asbestos enough time to seek relief by saying the clock can only run after they discover the harm that they are suffering and, again, the reason, the cause of the harm they are suffering.

We have made a number of adjustments in the way businesses are made liable for the impact of products where the rules are not fair to them.

But my point is also that this bill reflects the balance and the moderation that emerges when Members of both sides of the aisle choose to work together, choose to trust one another, choose to accommodate the diverse concerns that arise when a complicated topic like product liability comes up.

We are not seeing a lot of bipartisanship in the legislative process these days, and it is sad. It is more than sad for the country, it is grievous. I find all of that very troublesome. I think it is essentially a disservice to the country. We are a diverse nation with a Government designed to represent our differences and built with checks and balances on one another. We should draw on the strength of that diversity. Democrats and Republicans in the Senate should spend more time, I think, working together on the country's problems, working out solutions that will last and that will take root.

I think we do that in this bill. And when we do have bipartisan cooperation and it works, it only encourages us to do more, I hope. That is why the Senator from Washington and I formed the team to deal with the problems of product liability, and we intend to maintain that bipartisanship until we see a bill signed into law sometime later this year.

Finally, my belief that product liability legislation would pass has been based on the talent and the leadership that have been invested in this effort. Many Members of this body have contributed to this arduous, difficult effort. Senators DODD and LIEBERMAN have been staunch allies, and their staffs, Tony Orza and Nina Bang-Jensen. Senators on the other side of the aisle, from the majority leader to the chairmen of the Commerce and Judiciary Committees, have played essential roles in this. It is impossible to fully explain how much I respect and appreciate the Senator from Washington, SLADE GORTON. I think he stands out for, first of all, his acumen, his amazing mind, his tenacity, the wisdom of his counsel, his calmness under substantial fire, and his commitment to reform.

The staff who have assisted in this effort I think deserve medals for their valor and service and for their, by the way, exhaustion. On Senator GORTON's staff, Lance Bultena and Trent Erickson have been steady, quiet, dogged, and perfect in helping us work this through.

Assisting me, I cannot thank enough, and I would need to start with Tamera Stanton, who is my legislative director who sits at my left as I speak, who masters all subjects with tenacity and with understanding, is skillful in her sense of nuance, strategy, politics, and policy; Ellen Doneski, who does not know how to stop working, and as a result never does stop working and accomplishes incredible, amazing things, often many at the same time, so she just never stops working; Jim Gottlieb and Bill Brew, both in fact lawyers, which we need in our office. And they have both been brilliant, skillful, dogged, and successful. Without their labors and their incredible talent we would not be at this point.

I do not want to take the body's time, but I just want to make the point again that, if you pick up the paper, you will read Senator GORTON's name. If you listen to the television, you will hear his name and Senator HOLLINGS' name. And they can both do all of this on their own, pretty much, anyway. But actually it does not quite work out that way. Just as Senator HOLLINGS, Kevin Curtin, and others—it is the public that needs to know, while they are in their orgy of dislike for the Federal Government, that there are incredible people called staff of the U.S. Senators who make possible what it is that we do.

I want to acknowledge with respect the persistence and commitment of the flag-bearers who took the other side on this issue. The Senators from Alabama and South Carolina are daunting in their own legal minds and ferocity when it comes to this issue—both of them. They are different in many ways, the same in many ways, but both of them are extraordinary in their commitment to their beliefs. I hope they would agree it was a fair and open debate. They prevailed in the past without exception. It worked out the other way this time.

This has not been an easy issue for anybody involved. The legal system is a very serious part of our national fabric and life. The rights of every American are fundamental and are not to be tampered with easily. I have always felt that, as I have fought for product liability reform, in a sense I restate my pledge to navigate the remainder of the legislative process with a deep commitment to the principles of fairness and justice.

But I remain absolutely sure that it is time to fix this broken part of our legal system, and I think we have done a lot of it. The country is saddled with costs, with waste, with problems that can be eased with the reforms in this legislation.

The PRESIDING OFFICER (Mr. SANTORUM). The time of the Senator has expired.

Mr. ROCKEFELLER. Mr. President, I ask for an additional 60 seconds.

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

Mr. ROCKEFELLER. I am proud to give the Senate a chance, finally, to cast its vote on a balanced legislative remedy. I am relieved we restored a bill simply dealing with product liability and with the important changes worked out in the final hours that represent the bipartisanship and the balance that we sought from the beginning of this effort.

I am confident that President Clinton will sign this bill with whatever perfections we can make. I hope we will soon see the benefits of reform and demonstrate to the skeptics that the changes are in the entire Nation's interests.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, first a procedural announcement. Thirty minutes remains under the order with respect to debate on product liability. Senators in their offices, therefore, should be on notice that approximately at 11:40 there will be a vote on my motion to table the Dorgan amendment, followed immediately by a vote on final passage of the product liability bill with, we think, the substitute adopted by voice vote. So Members should be prepared to come to the floor at or shortly after 11:40.

On a second matter, in which I know I am joined by my colleague from West Virginia, regrettably, due to the inability of the Senators from Washington and West Virginia to get unanimous consent to make one additional change in their proposal, the so-called new trial provision after an additur remains in this bill. The Senators from West Virginia and Washington have pledged that the bill will not be presented by them to this body with that provision in it, and that pledge remains.

Other than that, this bill is the work of many years of effort culminated in this Congress, as in the last Congress, by the joint efforts of the Senator from West Virginia and myself, and of many others whom I will mention after we have had a final vote. Together, with the input from Members on both sides of the aisle, I am confident that the bill will pass and that it will represent a significant step forward.

Mr. President, one other comment that I make as a sponsor and one of the people who drafted this bill in the punitive damages section, we included an additive provision at the request of the Department of Justice of the United States, with the assurance that the provision is constitutional. That opinion, in my view, is correct. Such provisions are found in the laws of many States. If a court should, however, find the additive provisions to be unconstitutional, it is our intention that the remainder of the punitive damages provision will stand and that only the additive provision which is now found in section 107(b)(3) would be severed.

Mr. President, one argument against congressional legislation in this field, which has been raised by almost all of those who have come here to speak against it, is that we should not interfere in the Federal system with the laws of the 50 States. It is a curious argument as it is generally advanced by those Members of this body who are most anxious to interfere with the prerogatives of the States in many areas for which there is no explicit constitutional warrant. This, however, is a case in which congressional legislation is expressly warranted by the Constitution, and may very well have been anticipated, or would have been anticipated had they known what the economy of the United States would look like in the late 20th century, by those who wrote the Constitution itself. One of the principal reasons for the Constitutional Convention was the chaos that attended interstate commerce among the 13 States after the close of the War of the Revolution and before the adoption of the Constitution.

So under article I, section 8, clause 3, the interstate commerce clause, the Congress is invited, is given plenary power over interstate commerce. Of course, most of the products with which this bill deals are made of materials that arrive in interstate commerce and are sold after they are manufactured in interstate commerce, and a far greater degree of uniformity that is now in this bill would be constitutionally warranted. The compromises in this bill are in certain cases political and in other cases highly principled attempts to provide a degree of predictability and uniformity which will lead to more economic development, greater jobs, and better products for consumers with the very real history of local control over our courts and over our litigation. But as long ago as in the Federalist Papers, Alexander Hamilton made it clear that one of the key purposes of the Constitution was to prevent interstate commerce from being, and I quote him: "Fettered, interrupted, and narrowed" by parochial State regulations.

That, regrettably, is exactly what we have, particularly in that handful of States, often in rural counties, in which we find repeated huge punitive damage awards, almost invariably entered against out-of-State defendants or out-of-State corporations in a way which fetters, interrupts, and narrows interstate commerce by discouraging research and development and discouraging the marketing of new products. We have seen that happen in instance after instance in which companies large and small have found it improvident to develop new products to cure previously incurably diseases or to solve problems in our society because they might have an adverse impact on some individual, and that individual might sue and that individual might persuade a jury in someplace or another to award punitive damages in an amount that would make it utterly unprofitable ever to have entered that business in the first place.

Perhaps worse, and perhaps a greater interference with interstate commerce, is successful defense litigation where large companies find that they have spent tens of millions of dollars successfully defending against product liability litigation over products, that gross price of which is far less than those legal fees. So they say, "Why produce parts for implant into the bodies of people of the United States, as much good as those things do?"

It is our hope to make a modest step forward in creating a balance, not by denying any person the right to go to court, not by limiting the actual damages that any individual can receive for an act which is the responsibility of the individual or company which is called upon to make payment, but to see to it that there are fewer arbitrary judgments; that less of the time defendants are required to pay for the negligence or for the acts of others.

Mr. President, a day or so ago, the Senator from California [Mrs. BOXER], argued at length with respect to the McCain-Lieberman portions of this bill on biomaterials and that corporations

would be allowed to set up shell subsidiaries and protect themselves from liabilities.

That concern was raised in the Commerce Committee by the Senator from Nebraska [Mr. EXON], and expressly taken care of by an amendment that will allow piercing that corporate shell and not preventing the corporation, which is actually in control and which has assets, from protecting itself from the consequences of its own negligence.

But basically, Mr. President, we now have a product liability bill which includes a statutory repose for products that are used in a business enterprise. We have a limitation on joint liability with respect to noneconomic damages—that is, pain and suffering—under which we simply say that you are responsible as a defendant for the degree to which you have harmed the claimant, but that a defendant that is only 10 or 20 percent responsible for these damages is not going to be charged for the entire verdict simply because some other defendant cannot be reached.

We have imposed some modest rationality on the award of punitive damages. My colleague here this morning came up with one of the best sets of examples I have ever heard, something which has not been brought before the Senate in this 3 weeks, when he points out that for all practical purposes every Federal criminal statute which includes the right to a fine as a part of the sentence has a limitation on those fines, and yet to be subjected to a criminal fine one must be found guilty beyond a reasonable doubt. One has all of the protections of the fifth amendment against self-incrimination. And yet here we, the Congress of the United States, have set a maximum fine, $10,000; maximum fine, $25,000. I think the maximum fine they found was $250,000.

We vote for these criminal penalties, and yet our opponents tell us how outrageous it is in a civil case, with no fifth amendment rights, no standard of proof beyond a reasonable doubt, how unreasonable it is to set any limit on what a jury can do in the way of punishment—punishment over and beyond all of the damages that are actually proven by the claimant in a particular case.

Mr. President, this bill is not a perfect bill, in my view, and it is not a perfect bill because it does not limit that form of arbitrary punishment sufficiently. But it does begin down a road which we have been invited to take by the Supreme Court of the United States which says without having set standards itself that there are constitutional implications to unlimited punitive damage verdicts. And so here we have an experiment. We attempt to balance the rights of trial lawyers against the necessity for a better and more effective economy, one in which people are encouraged to innovate, to create new jobs and to create new products for the American people.

We have been at this for a long time. I know from personal experience that there were product liability bills in the Senate and in the Commerce Committee on which I serve as long ago as 1982. I suspect that they existed before that time. I can remember one product liability bill in that committee against which I voted myself because it seemed to me it went too far, that it was unbalanced on the other side. This one is not, Mr. President. This one is a good piece of legislation. It is something that will help the American economy and help the cause of balanced and appropriate justice.

Finally, Mr. President, it is a precedent in a sense but it has one preceding element. A year or so ago, we passed a very modest product liability bill for piston driven aircraft. The legal system, the legal system defended by the other side here, had destroyed that business, reduced its production by 95 percent. A modest change in the law at the Federal level has already contributed to the recovery, the beginning of the recovery of that business—a dramatic illustration that the horror stories are not true and that the promises made by the proponents of this litigation have been proven to be valid by history. If my colleagues will vote for this, if we get it accepted by the House and signed by the President of the United States, this country will be significantly better off.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Oh, so reasoned, says my distinguished colleague from Washington. It is so balanced. GOPAC has taken over. GINGRICH is the Speaker, and there is a contract. Look at the elements of this contract. Part and parcel either by way of amendments here or in bills on the House side or what they have in mind is not just product liability but they have limiting pain and suffering damages; they have limiting the punitive damages; they tried to fit in medical malpractice; they tried to then limit plaintiff's attorney's fees. They voted against the fees on the defendants. They were not making enough. They ought to make more than $133,000 a year. They tried to limit punitive damages in all civil cases. The English rule is in the bill over on the House side; the alternative dispute resolution with the plaintiff having to pay all the fees; the securities litigation, the FDA and FAA rules where they would bar damages if the product is approved by either of those entities; they exempt the medical devices and the doctors, a provision about frivolous suits, statutes of repose; restricted submission of evidence is in this bill, in the House bills, bifurcation of the trials, both actual and punitive damages. Then they even put in an unconstitutional additur provision here.

Like the sheepdog had tasted blood, with product liability they are going to gobble up all the other rights and say it is so reasoned and so balanced.

One exemption they have from all this, Mr. President. One exemption—the manufacturers, the very crowd that through this bill continue to put in the amendments and everything else. They exempt the manufacturer and apply this all to the injured party and have the unmitigated gall to come up here and say they are for consumers. Why, heavens above. Come on.

I ask unanimous consent to include in the RECORD the State-based organizations opposed to this legal reform bill.

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

STATE BASED ORGANIZATIONS OPPOSED TO "LEGAL REFORM" IN THE SENATE (S. 565)

Alaska PIRG.
Arizona Citizen Action.
California Citizen Action.
Center for Public Interest Law at the University of San Diego.
California Crime Victims Legal Clinic.
Fair Housing Council of San Gabriel Valley.
Colorado Steelworkers Union Local 2102.
Coalition of Silicon Survivors.
Colorado DES Action.
Denver UAW.
Colorado ACLU.
Denver Gray Panthers.
Colorado Public Interest Research Group (CoPIRG).
Colorado Clean Water Action.
Colorado Senior Lobby.
Connecticut Citizen Action Group.
ConnPIRG (Connecticut Public Interest Research Group).
Delaware Coalition for Accountability and Justice.
Delaware AARP.
Delaware Council of Senior Citizens.
Delaware AFL-CIO.
Delaware Federation of Women's Clubs.
Delaware Women and Wellness.
Delaware Breast Cancer Coalition.
Building Trades Council of Delaware.
UAW Local 1183—Delaware.
Delaware Sierra Club.
Delaware Audubon Society.
Save the Wetlands and Bays—Delaware.
Georgia Consumer Center.
Idaho Citizens Action Network.
Idaho Consumer Affairs, Inc.
Illinois Council Against Handgun Violence.
Citizens Action Coalition of Indiana.
Planned Parenthood of Maryland.
Law Foundation of Prince George's County.
Maryland Sierra Club.
Teamsters Joint Council No. 62.
UFCW Local 440.
White Lung Association & National Asbestos Victims.
Sexual Assault/Domestic Violence Center, Inc.
IBEW Local 24.
Maryland Clean Water Action.
Maryland Employment Lawyers Association.
Health Education Resource Organization (H.E.R.O.).

Environmental Action Foundation.
Massachusetts Consumer Association.
Minnesotans for Safe Foods.
Missouri PIRG.
Montana PIRG.
Nebraska Coalition for Accountability & Justice.
Nebraska Farmers Union.
Nebraska Women's Political Network.
Nebraska National Organization for Women.
United Rubber Workers of America, Local 286.
Communications Workers of America, Local 7470.
Nebraska Head Injury Association.
Nebraska Center for Rural Affairs.
White Lung Association of New Jersey.
Consumers League of New Jersey.
Cornucopia Network of New Jersey.
New Jersey DES Action.
New Jersey Environmental Federation.
New Mexico Citizen Action.
Essex West Hudson Labor Council.
Uniformed Firefighters Association of Greater New York.
New York Consumer Assembly.
Niagara Consumer Association.
North Carolina Consumers Council.
North Dakota Public Employees Association.
North Dakota DES Action.
North Dakota Clean Water Action.
Dakota Center for Independent Living.
North Dakota Breast Implant Coalition.
North Dakota Progressive Coalition.
Laborer's International Union, Local 580.
Boilermaker's Local 647.
Ironworkers Local 793.
United Transportation Union.
Sierra Club, Agassiz Basin Group.
Plumbers & Pipefitters Local 338.
United Church of Christ.
Teamsters Local 116.
Teamsters Local 123.
Plumbers & Pipefitters, Local 795.
Workers Against Inhumane Treatment.
Ohio Consumer League.
Oregon Fair Share.
Oregon Consumer League.
Pennsylvania Citizens Consumer Council.
Pennsylvania Institute for Community Services.
SmokeFree Pennsylvania.
South Dakota AFSCME.
East River Group Sierra Club.
Black Hills Group Sierra Club.
South Dakota State University.
IBEW, Local 426.
South Dakota DES Action.
South Dakota Peace & Justice Center.
Native American Women's Health & Education Center.
Native American Women's Reproductive Rights Coalition.
South Dakota AFL-CIO.
UFCW Local 304A.
Yankton Sioux Tribe.
South Dakota Coalition Against Domestic Violence.
South Dakota Advocacy Network.
South Dakota United Transportation Union.
South Dakota United Paperworkers International Union.
Texas Alliance for Human Needs.
Texas Public Citizen.
Vermont PIRG.
WASHPIRG (Washington Public Interest Research Group).
Wisconsin PIRG.

CITIZEN ACTION,
Montgomery, AL, April 26, 1995.

Hon. RICHARD SHELBY,
U.S. Senate,
Washington, DC.

DEAR SENATOR SHELBY: On behalf of our members, I am writing to thank you for your past opposition to federal "tort reform" legislation and to offer our support in your efforts this year.

As you know, Governor Fob James, in his April 18th State of the State Address, stated that "intrusive federal law should not dictate tort reform legislation to the states." You might also be interested to know that similar sentiments have been reflected by the majority of audiences in several forums I have attended on the issued in the past month.

Our members also are deeply concerned about the consequences of capping punitive damages and eliminating joint and several liability for non-economic damages. Proposals such as these threaten public safety in Alabama by removing the deterrent effect of punitive damages, and they discriminate against those most likely to suffer non-economic damages, such as women, seniors, and children.

Thank you again for your leadership in fighting to uphold the democratic principles embodied in our state civil justice system and for voting "no" on the upcoming cloture votes on S. 565. Please do not hesitate to call on me for any assistance on this matter in the coming weeks.

Sincerely yours,

MIKE ODOM,
Executive Director.

ARIZONA CONSUMERS COUNCIL,
Phoenix, AZ, April 19, 1995.

Senator JOHN MCCAIN,
Russell Office Building,
Washington, DC.

DEAR SENATOR MCCAIN: Two bills are expected to come to the floor this week—The Telecommunications Competition and Deregulation Act of 1995, and the Product Liability Fairness Act of 1995. We believe that these bills are both anti-consumer and anti-competitive.

Consumers have been strong in their requests to continue regulation of cable and in feeling that their bills have gone too high—three times the rate of inflation—for this service. Reregulation was the ONLY bill which was passed over the veto of President Bush.

Your office asked me to represent you on KFYI in favor of reregulation at that time. I did my best on that program.

Local cable companies now have a network which pass 96% of the homes in the country. They are best positioned to compete with the monopoly local telephone companies. This bill would permit these local monopolies to buy each other, merge or joint venture, thus eliminating the most likely competitor in each market. This means the promised benefits of competition, including lower prices, greater innovation and better service may never be realized by most consumers.

S. 565 sets arbitrary limits on punitive damages and eliminates joint and several liability for non-economic damages. This bill will restrict the ability of injured consumers to obtain full and fair compensation for their injuries, and for juries to act to prevent further wrongdoing.

The Arizona Consumers Council which represents consumers in all countries of the state and was organized in 1966 is also a member of Consumer Federation of America, who represent 50 million consumers nationwide, we urge you to opposed S. 652. and also S. 565.

Sincerely,

PHYLLIS ROWE,
President.

CONSUMER FEDERATION OF CALIFORNIA,
Westminster, CA, April 18, 1995.

Re Opposition to S. 565 and S. 454.

Senator BARBARA BOXER,
U.S. Senate,
Washington, DC.

DEAR SENATOR BOXER: On behalf of the Consumer Federation of California, I wish to express strong opposition to S 565, the "Product Liability Fairness Act of 1995." Injured consumers would not be able to obtain full and fair compensation if this legislation is passed.

The two major provisions of this legislation would have a far reaching, negative impact on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Consumer Federation of California also urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of the consumer to be compensated fully for injuries and to act to prevent further wrong doing.

Sincerely,

Dr. REGENE L. MITCHELL,
President.

MOTOR VOTERS,
Sacramento, CA, April 19, 1995.

Re S. 565: Oppose.

Hon. DIANE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Motor Voters is a non-profit, non-partisan auto safety organization founded in Lemon Grove, outside San Diego, in 1979.

This letter is to urge you to oppose S. 565, the product liability measure. Our members include parents of children who suffered permanent, debilitating brain injuries or who were killed due to the deliberate disregard of auto manufacturers.

It would be impossible to tell you how strongly those parents feel that companies need to be held accountable for their actions. In fact, they wish to see the law strengthened to provide for felony criminal penalties for corporate executives who knowingly market unsafe products.

Corporate executive are too insulated from the damage they inflict upon their customers and the public at large. If they were more personally accountable, it would provide a desperately needed incentive for them to consider more than their bottom line.

In the absence of criminal penalties, the only hope we have of curbing rampant corporate misconduct is through product liability laws. It is appalling that special interests are seeking to restrict remedies in consumers' court of last resort. The "loser pays"

concept is particularly pernicious, as it entirely ignores the unequal footing of the two parties. Individuals already risk a great deal when they sue a giant corporation, and experience tremendous stress. A family with a brain-injured child has enough to worry about without the danger that, if their attorney makes a mistake, they can be totally impoverished.

Ironically, many advances in safety technology, spurred by lawsuits, end up benefiting everyone—including companies. For example, here in California, many former defense contractors are converting to making auto safety components such as air bags. The demand for improved safety is spawning an entire new industry and creating new, high-tech jobs. It is time to move forward, not back.

For all of the above reasons, I urge your "no" vote on S. 565.

Sincerely,

ROSEMARY SHAHAN,
President.

CALIFORNIA PUBLIC INTEREST RESEARCH GROUP,
Los Angeles, CA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote "No" on S. 565.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN, We are writing on behalf of CALPIRG's members, and on behalf of all residents of California to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, CALPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MARY RAFTERY,
Legislative Director.

COALITION FOR ACCOUNTABILITY & JUSTICE,
April 21, 1995.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR CAMPBELL: We, the undersigned individuals and organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Colorado.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tier system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Colorado exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protection for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill. Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Julie Shiels, Son killed by defective bunkbed; International Steelworkers Union, Local 2102; Coalition of Silicon Survivors; DES Action, Colorado Chapter; Denver United Auto Workers; ACLU of Colorado; Gray Panthers of Denver; Colorado Public Interest Research Group (CoPIRG); Clean Water Action, Colorado Chapter; Ann Ives, Silicon breast survivor, DES survivor; Oil, Chemical & Atomic Worker International Union, AFL-CIO; Colorado Senior Lobby.

COLORADO PUBLIC INTEREST RESEARCH GROUP,
Denver, CO, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote No. on S. 565.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATOR NIGHTHORSE CAMPBELL: We are writing on behalf of COPIRG's members, and on behalf of all residents of Colorado to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, COPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

RICHARD MCCLINTOCK,
Executive Director.

CONNECTICUT PUBLIC INTEREST RESEARCH GROUP,
Hartford, CT, April 24, 1995.

Re Protect Victims of Dangerous Products—Oppose Cloture and Vote "No" on S. 565

Hon. CHRIS DODD,
U.S. Senate
Washington, DC.

DEAR SENATOR DODD: We are writing on behalf of ConnPIRG's members, and on behalf of all residents of Connecticut to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As

you know, ConnPIRG is a statewide; nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its cap on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

JAMES AMSPACHER,
Organizing Director.

CONNECTICUT CITIZEN ACTION GROUP,
West Hartford, CT.

Senator CHRISTOPHER DODD,
Senate Office Building,
Washington, DC

DEAR SENATOR DODD: On behalf of the Connecticut Citizen Action Group, I'm asking you to oppose Senate Bill 565 and to vote against cloture. S. 565, called the "Product Liability Fairness Act" does nothing to protect consumers. Instead, it lets corporate wrongdoers off the hook when they produce products that injure consumers.

First, this bill sets arbitrary caps on punitive damages of $250,000 or three times the out-of-pocket expenses. Ordinary citizens serving on juries use these awards to punish and deter outrageous and dangerous behavior by corporations.

Second, this bill makes it more difficult for victims with less earning power—particularly seniors, women and children—to recover the fair cost of their injuries. Consumers and workers injured through no fault of their own, but by the actions of more than one wrongdoer would have to prove the degree of fault of each liable party. If any wrongdoer were unable to pay its share, the injured consumer would have to bear the cost.

Senator Dodd, these reforms are wrongminded. They imperil ordinary consumers and we ask that you work to defeat such measures. Again, please vote against S. 565 and against cloture.

GREGORY HADDAD,
Legislative Director.

DELAWARE COALITION FOR ACCOUNTABILITY AND JUSTICE,
April 24, 1995.

Hon. WILLIAM ROTH,
Hon. JOSEPH BIDEN,
U.S. Senate,
Washington, DC.

DEAR SENATORS: We, the undersigned individuals and organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Delaware.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages, and deterring harmful behavior. By giving "noneconomic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Delaware exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuse or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 959, in addition to the provisions outlines above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Edward Cahill, State Director, Delaware AARP; Edward Peterson, President, Delaware AFL–CIO; Deirdre O'Connoll, Executive Director, Women and Wellness; Rick Crawford, President, Building Trades Council of Delaware; Debbie Heaton, President, Delaware Sierra Club; Til Purnell, Executive Director, Save Wetlands and Bays; Amos McCluney, Jr., President, Delaware Council of Senior Citizens; May Northwood, President, Delaware Federation of Women's Clubs;[1] Maureen Lauterbach, Women and Wellness and National Breast Cancer Coalition;[1] Don Cordell, President, United Auto Workers Local 1183; Ann Rydgren, President, Delaware Audubon Society.

CONSUMER FRAUD WATCH,
Tallahassee, FL, April 19, 1995.

Senator CONNIE MACK,
U.S. Senate,
Washington, DC.

DEAR SENATOR MACK: I want to express our strong opposition to S. 565, the "Product Liability Fairness Act of 1995". This bill would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely,

WALTER T. DARTLAND,
Executive Director.

FLORIDA CONSUMER ACTION NETWORK,
Tallahassee, FL, April 24, 1995.

Senator BOB GRAHAM,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR GRAHAM: The Florida Consumer Action Network (FCAN) is requesting that you vote "NO" on Senate Bill 565, the Product Liability Bill. Additionally, we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the more than 40,000 families that are members of FCAN and on all Florida consumers.

By capping punitive damages at $250,000 or three times the economic loss (whichever is greater) the legislation removes the punitive

[1] For identification purposes only. Endorsements are by the individual, not the organization.

impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages rather than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of Florida's consumers. We again ask for your vote against S. 565 and against cloture in the upcoming debate.

Sincerely,

MONTE E. BELOTE,
Executive Director.

FLORIDA PIRG,
FLORIDA PUBLIC INTEREST RESEARCH GROUP,
Tallahassee, FL, April 24, 1995.

Re Protect Victims of Dangerous Products, Oppose Cloture and Vote No on S. 565.

Hon. BOB GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAHAM: We are writing on behalf of Florida PIRG's members, and on behalf of all residents of Florida to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Florida PIRG is a statewide, nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANN WHITFIELD,
Executive Director.

CITIZEN ACTION,
Atlanta, GA, April 18, 1995.

Hon. PAUL COVERDELL,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR COVERDELL: On behalf of the 40,000 members of Georgia Citizen Action, I am writing to express our opposition to S. 565 and to urge you to vote against cloture.

S. 565, the Product Liability Fairness Act of 1995, is anything but fair to consumers. In fact, it will effectively leave citizens unprotected against the manufacture and sale of hazardous or defective products. Capping punitive damages at $250,000 or three times economic loss defeats the purpose of punitive damages, which is to punish for a wrongdoing. Multi-million dollar corporations will consider these caps merely the cost of doing business, rather than a punishment for injuring unsuspecting consumers, and consequently, punitive damages will no longer serve as a deterrent to irresponsible and unscrupulous companies who would manufacture or sell harmful products.

Additionally, the provisions to eliminate joint and several liability for non-economic damages discriminates against women, children, and senior citizens as they are less likely to recover high economic damages (i.e. lost wages). Joint and several liability ensures that the parties at fault pay, not the victim, and by eliminating this, those victims who suffer loss of reproductive capacity, disfigurement, or loss of sight, for example, could be further wronged by not being able to recover the full amount of their awarded damages.

For these reasons, Georgia Citizen Action strongly urges you to oppose S. 565 and to vote against cloture. Please inform us of your actions regarding this bill.

Sincerely,

LORI GLIDEWELL,
Director.

CITIZEN ADVOCACY CENTER,
Elmhurst, IL, April 20, 1995.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: The Citizen Advocacy Center, a non-partisan, not-for-profit organization in DuPage County, is dedicated to building democracy for the 21st century. We promote good citizenship, participation in civic affairs, access to justice, and accountability of local governments to the citizens of the western suburbs of Chicago. We are writing to urge you to vote "no" both on the upcoming cloture vote of S. 565, and the vote on the merits. We oppose any legislation that makes access to justice more difficult for individual citizens.

As you know Senator Braun, the large crossover vote in the western suburbs of Chicago, particularly the crossover vote of women, helped to elect you to represent our interests in the United States Senate. We expect you to make access to justice easier, not more difficult, for consumers viciously injured by defective products. The provisions of S. 565 are an undisguised attempt to take control and common sense away from Illinois citizens in the jury box and to replace it with Washington-dictated arbitrariness designed to protect and payback the business interests that have paid so handsomely for this legislation. In particular, we find the provisions of S. 565 do great damage to women—and as one of the few women Senators, we frankly expect you to take a good hard look at how the specific provisions of this bill will prevent women with low economic damage awards from being adequately compensated for lifelong injuries caused by corporate greed.

Moreover, after last Sunday's Chicago Tribune Magazine cover story, it seems that you are burnishing your business image after having recently secured a seat on the Finance Committee. Nonetheless, Illinois voters remember that last year you voted against a less damaging products liability bill, and a flip-flop vote now will look like you are selling out ordinary citizens and consumers to cozy up to business interests. We are happy that you have won a seat on the committee, but we expect you to use that seat to remain true to the agenda that put you in the Senate in the first place. Please do not sell out the citizens of Illinois.

Very truly yours,

THERESA AMATO,
Executive Director,
Citizen Advocacy Center.

CHICAGO AND CENTRAL STATES JOINT BOARD, ACTWU, AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION,
Chicago, IL, March 31, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: On behalf of the members of our union we urge you to vote against consideration of any legislation that lessons the financial responsibility of corporate polluters or manufacturers of dangerous products. These, so called, efforts at "tort reform" are more aptly known as the Wrongdoer Protection Act.

Furthermore, these attempts at reform are plainly anti-workers and anti-consumer.

Your opposition to the more onerous parts of these tort reforms proposals is not enough. Your leadership is needed to stop passage of any restrictions limiting the access of consumers and workers to the courts.

Your leadership against these tort restrictions can send a positive signal that you stand on the side of workers and consumers.

Sincerely,

JAMES K. TRIBBLE,
International Vice President.

RONALD WILLIS,
Manager, ACTWU, Chicago and Central States Joint Board.

PUBLIC ACTION,
Chicago, IL, April 24, 1995.

Senator CAROL MOSELEY-BRAUN,
U.S. Senate,
Washington, DC.

DEAR SENATOR MOSELEY-BRAUN: Illinois Public Action is requesting that you vote "NO" on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill passes, it will have a devastating effect on the 215,000 families that are members of Public Action and on all Illinois consumers.

By capping punitive damages at $250,000 or three times the economic loss (which ever is greater), the legislation removes the punitive impact from punitive sanctions, rendering them meaningless as punishment in most cases. It will be cheaper for many corporations to pay such damages than rectify their faulty products.

Eliminating joint and several liability for non-economic damages saddles the victim for the costs of the damages incurred by the wrongdoing parties. It is unjust and particularly discriminatory for women, children and senior citizens.

Obviously this bill is not in the best interest of the Illinois public. We again ask for your vote against the bill and against cloture in the coming debate.

Sincerely,

ROBERT B. CREAMER,
Executive Director.

ILLINOIS PIRG, Illinois Public
INTEREST RESEARCH GROUP,
Chicago, IL, April 24, 1995.

Re: Protect Victims of Dangerous Products, Oppose Cloture and Vote No on S. 565.

Hon. CAROL MOSELEY-BRAUN,
U.S. Senate,
Wshington, DC.

DEAR SENATOR MOSELEY-BRAUN: We are writing on behalf of Illinois PIRG's members, and on behalf of all residents of Illinois to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Illinois PIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DIANE BROWN,
Executive Director.

IOWA CITIZEN
ACTION NETWORK,
Des Moines, IA, April 14, 1995.

Hon. TOM HARKIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HARKIN: We are writing to communicate ICAN's views about the so-called Products Liability "Fairness" Act—S. 565. It is our understanding that S. 565 is set for two weeks of debate on the Senate floor, beginning on or about April 24.

We are pleased that you have indicated that, as in the past, you will lead the fight against this legislation. We heartily commend your determination to use all means available to keep the bill from coming to a vote on final passage.

S. 565 is a bill that would produce extremely detrimental consequences for citizens, workers, and consumers. There are a number of objectionable provisions in the legislation, but for the purposes of this letter we would like to focus on provisions relating to joint and several liability and punitive damages.

As you know, S. 565 eliminates joint and several liability for non-economic damages. This clearly discriminates against women, children, senior citizens, persons with disabilities, the poor, and low-wage workers, who more often receive the bulk of compensation for their injuries due to sustained non-economic losses, such as loss of reproductive capacity, loss of vision, disfigurement, etc. S. 565 treats these first rate members of society as second class citizens.

Under current Iowa law, in cases where more than one party is found to have been at fault in causing a plaintiff's injuries, a guilty party that caused more than 50% of the harm can be held jointly and severally liable for damages. S. 565 would supersede Iowa law, making it more likely that injured parties would be forced to forego amounts of compensation for their non-economic losses when one or more of the defendants are unable to pay. This Washington-Knows-Best bill reshuffles the cards and stacks the deck against plaintiffs in Iowa.

S. 565 also imposes an arbitrary and unreasonable cap on punitive damages that would undermine the important deterrent effect which these damages have on corporate wrongdoers. This is unnecessary and rash in light of the fact that punitive damages in product liability cases are rare but have made Americans much safer.

The bill limits punitive damage judgments to the greater of three times the amount of economic losses or $250,000. Once again, this provision is a slap in the face to women, children, senior citizens, persons with disabilities, the poor, and low-wage workers. And the provision sends a warped message to corporate wrongdoers: If you injure a woman, a child, an elderly grandparent, a disabled person, or a minimum wage worker, you are likely to be punished less than if you injure a corporate CEO. The consequences of such a legal policy would be lethal to many average Americans.

In addition, S. 565 imposes an unreasonable standard of "conscious flagrant indifference to safety" for assessment of punitive damages. A defendant whose conduct was merely "reckless" or "wanton" would escape punitive damages. If the superheightened punitive damage standards in S. 565 had applied to the Exxon-Valdez case, Exxon would probably not have paid a dime in punitive damages since the punitive damages were awarded for "reckless" conduct. Moreover, proving a corporate defendant's "state of mind" would be next to impossible in most product liability cases.

S. 565 is imprudent and unwarranted legislation. Product liability tort filings make up an extremely small percentage of all civil filings and the number of product liability filings has been steadily declining. We are mobilizing concerned citizens in Iowa to oppose this bogus bill.

We are grateful for your leadership in opposing this legislation. Please let us know whether and how we can provide any information or assistance to support your efforts.

Your commitment to civil justice for all Americans is greatly appreciated.

Respectfully,

STEVE SIEGEL/BL
President.

BRAD LINT,
Executive Director.

UAW SUB-REGIONAL OFFICE
REGION 4,
Des Moines, IA, April 20, 1995.

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: On behalf of the UAW men and women who live, work, and vote in Iowa, I am writing to express our opposition to S. 565—the so-called Products Liability "Fairness" Act. This legislation is grossly unfair and one-sided.

S. 565 would, without a doubt, take away the right of workers to hold large corporations fully accountable for the injuries they cause when they manufacture and sell defective products—including dangerous workplace machinery. Employers claims, however, appear to be unaffected by the law—only workers would lose their right to be heard.

S. 565 sets up a series of hurdles and obstacles to the ability of injured workers and consumers to recover from the manufacturers of defective products. In fact, under the bill's statute of repose, workers injured by defective machinery more than twenty years old could not recover *at all*, but businesses apparently could recover all their losses—including lost profits.

S. 565 would also cap punitive damages far below the point of effectiveness. If the bill becomes law it would be much more difficult for ordinary Iowans to punish and deter corporate misbehavior, even when they are maimed or killed by the recklessness or negligence of a corporation.

In summary, S. 565 is unfair to workers and consumers. The UAW is delighted that you will be voting against cloture during debate and, if needed, against the bill on final passage.

Thank you for your firm commitment to civil justice for workers and consumers.

Respectfully,

CHUCK GIFFORD,
President.

IOWA STATE COUNCIL
OF SENIOR CITIZENS,
Waterloo, IA, April 20, 1995.

Hon. TOM HARKIN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HARKIN: I am writing to express our concern about S. 565—the so-called Products Liability "Fairness" Act. The Iowa State Council of Senior Citizens believes the bill to be unfair to senior citizens and we are grateful for your announced opposition to it.

It is my understanding that S. 565 eliminates joint and several liability for non-economic losses. Senior citizens do not generally incur substantial economic losses when they are injured by defective products. They tend to receive compensation for non-economic losses resulting from disfigurement, loss of vision, pain and suffering, etc.

Under S. 565 when multiple parties are found to have caused the harm to an injured consumer the amount of compensation for non-economic losses would, without exception, be reduced when one or more of the at-fault parties is unable to pay. This situation would be worse than current Iowa law where injured consumers can at least recover non-economic damages jointly and severally whenever one of the parties at fault is more than 50% responsible for the harm caused to the injured consumer.

It is also my understanding that S. 565 limits punitive damages in product liability cases to the greater of three times the amount of economic losses or $250,000. This provision also discriminates against senior citizens. Again, since seniors do not usually have large economic losses, corporate wrongdoers who injure a senior are likely—if their misconduct was bad enough to warrant punitive damages—to be punished less than if they injure a corporate executive who has large earnings. Is this wise legal policy?

The Iowa State Council of Senior Citizens believes that, taken together, these two discriminatory provisions could lead to less safe medical devices and consumer products primarily manufactured for use by senior citizens. Women, children, disabled persons, and low-wage workers are also likely to be adversely affected by these ill-conceived provisions.

S. 565 could have a devastating effect on the economic security and safety of older Iowans. The Iowa State Council Citizens is glad you will oppose S. 565 during the coming Senate debate by voting against cloture and, if necessary, against the bill.

Thank you for your considerate attention to our point of view. Please let us know if we can be of any further assistance.

Respectfully,

FRANK ALEXANDER,
President.

CITIZEN ACTION,
Louisville, KY, March 14, 1995.

Hon. MITCH MCCONNELL,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR MCCONNELL: On behalf of Kentucky Citizen Action, I would like to express our strong opposition to the so-called "Product Liability Fairness Act", S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a "moderate" light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of $250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 25 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting "No" on cloture.

Sincerely,

LORI EVERHART,
State Director.

CITIZEN ACTION,
Baton Rouge, LA, April 14, 1995.

Hon. JOHN BREAUX,
U.S. Senate,
Washington, DC.

DEAR SENATOR BREAUX: On behalf of our members, your constituents, Louisiana Citizen Action once again asks that you vote "No" on S. 565 and "No" on cloture. We strongly believe that it is your responsibility to hold negligent businesses accountable to the public.

By setting caps on punitive damages, S. 565 would send a clear message that corporations do not really have to worry about liability for dangerous products and practices. Punitive damages, after all, were meant to be deterrents to corporate misconduct.

This law, which favors the financial interests of big business over protecting the public, is especially threatening to the most vulnerable—women, children, and seniors. Elimination of joint and several liability for non-economic damages deeply undervalues the impact of injuries upon these citizens.

Please take a firm stand to support fairness and responsibility in our judicial system. We will be happy to inform our members when you vote no to S. 565 and no to cloture. Thank you for your consideration on this issue.

Sincerely,

PAULA HENDERSON,
State Director.

MAINE PEOPLE'S ALLIANCE.
April 21, 1995.

Senator OLYMPIA SNOWE,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR SNOWE: As you know, debate will begin next week on the Rockefeller-Gorton Bill (S. 565). We wanted to write you in hopes that with your concern for the citizens of Maine—particularly women, children and other economically underprivileged—you will join with us in opposition to that bill. The Contract With America effort is bulldozing ahead with legal reforms that only benefit the manufacturers of defective products.

The bill's supporters claim it is designed to reduce the "explosion" of product liability lawsuits, but there is no evidence suggesting that such a problem exists. In fact, close study of 30 years of case law in Maine reveals that punitive damages have been awarded in only three cases. At $250,000, companies will not be deterred and will simply write the cost of a punitive damage award into the cost of doing business.

An especially worrisome provision of this bill will be the elimination of joint and several liability for non-economic damages. Since women, seniors, and children are more likely to suffer non-economic injuries than high economic injuries (e.g. lost wages), the elimination of joint and several liability discriminates against them. This provision basically states that corporations which manufacture child car seats or children's pajamas can be less careful than manufacturers of golf carts.

As you know, our organization has differed with you on some issues in the past, however we know that you will join with us in opposing this tort reform effort. The notion of Federal Legislation that would preempt the ability of states like Maine to hold wrong doers accountable and deter their future wrongdoing is unacceptable. As you know our organization has had differences with you in the past, but we hope that you will join us in standing against the bill. All Mainers, especially those without the largest salaries (especially women and children) deserve access to a fair and supportive legal system.

Sincerely,

JOE DITRE,
Executive Director.

CITIZEN ACTION,
Bethesda, MD, April 17, 1995.

Hon. BARBARA MIKULSKI,
Hart Building,
Washington, DC.

DEAR SENATOR MIKULSKI: On behalf of Maryland Citizen Action and our 50,000 members I am writing to urge you to oppose "The Product Liability Fairness Act" (S. 565). Please vote pro-consumer and against cloture when this bill comes up in the Senate. If enacted the most vulnerable citizens in our state would be further disadvantaged and the rights of consumers to hold irresponsible manufacturers accountable for their wrongful behavior would be severely limited.

As a champion of women's health, working people and children, I am sure you know that these groups are disproportionately affected by faulty products—breast implants, asbestos, and flammable pajamas to name just a few. S. 565 limits the ability of these people to collect fair compensation for their injuries or losses because it would eliminate joint and several liability for non-economic damages. Under current law, a plaintiff is paid only once, and the cost is covered by the wrongdoers who contributed to the victim's loss. Under S. 565, non-economic damages, such as a women's loss of fertility or a worker's loss of a limb, would not be fully compensated if one of the wrongdoers is unavailable or insolvent. The victim would be forced to carry the burden.

S. 565 also imposes a cap on punitive damages ($250,000 or 3 times economic damages) which undermines the important deterrent effect that these damages have on corporate wrongdoers. Under our current system punitive damages are often the only means available to deter irresponsible behavior such as that exhibited by Dow Corning when it knowingly sold hundreds of thousands of faulty and dangerous breast implants to women. Under S. 565, large corporations, such as Dow Corning, may find it more cost effective to continue their harmful behavior and risk paying punitive damages.

Please stand up for consumers in Maryland by opposing S. 565 and voting against cloture. We are counting on your admirable leadership and your great fighting spirit to halt the current attack on average consumers, women, families and children.

Please let me know how you intend to vote.

Sincerely,

SHELLI CRAVER,
Director, Maryland Citizen Action.

MARYLAND STATE TEACHERS ASSOCIATION—NEA,
Baltimore, MD, March 29, 1995.

Hon. PAUL S. SARBANES,
U.S. Senate, Senate Office Building, Washington, DC.

DEAR SENATOR SARBANES: The Maryland State Teachers Association has very strong reservations about the so-called "Common Sense Legal Reforms Act," which the Senate appears to be rushing forward without full debate or careful analysis. We urge you to vote against this bill as anti-consumer legislation.

We see this bill as restricting the ability of injured consumers and workers to obtain full and fair compensation for such injuries. While all of us have a stake in making sure that frivolous law suits become less common than they appear to be, we also all have a stake in making sure that individuals maintain rights to protest and recover damages from product manufactures which have been shown to be dangerous.

Therefore, I urge your opposition to this and similar legislation.

Yours truly,

KARL K. PENCE,
President.

MARYLAND PUBLIC INTEREST RESEARCH GROUP,
Baltimore, MD, April 24, 1995.

PROTECT VICTIMS OF DANGEROUS PRODUCTS—OPPOSE CLOTURE AND VOTE "NO" ON S. 565

Hon. BARBARA MIKULSKI,
U.S. Senate,
Washington, DC.

DEAR SENATOR MIKULSKI: We are writing on behalf of MaryPIRG's members, and on behalf of all residents of Maryland to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, MaryPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DANIEL PONTIOUS,
Executive Director.

APRIL 24, 1995.

Hon. BARBARA A. MIKULSKI,
Hon. PAUL S. SARBANES,
U.S. Senate,
Washington, DC.

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Maryland.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of Maryland exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Jennifer L. Marshall, Coalition for Accountability and Justice; Anne D. LoPiano, Law Foundation of Prince George's County, MD Inc.; Nancy Davis, Maryland Sierra Club; Ken Reichard, United Food and Commercial Workers, Local 400; Cynthia K. Bailey, LCSWC, Sexual Assault/Domestic Violence Center, Inc.; Dru Schmidt-Perkins, Clean Water Action; Dr. Leonardo Ortega, Health Education Resource Organization—HERO; Michele Douglas, Planned Parenthood of Maryland, Inc.; Dan Pontious, Maryland PIRG; Bob Turner, Teamsters Joint Council No. 62; Paul Safchuck, White Lung Association & National Asbestos Victims; Woody McNemar, International Brotherhood of Electrical Workers, Local 24; Kathleen Cahill, Maryland Employment Lawyers Association; Margaret Morgan-Hubbard, Environmental Action Foundation.

JOBS WITH JUSTICE,
Combridge, MA, April 21, 1995.

Senator EDWARD KENNEDY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KENNEDY: We, the undersigned supporters of Jobs With Justice, a workers' rights coalition, are extremely concerned about the negative effects on the rights of workers and consumers which will result from proposals before the Senate to change the civil justice system. We urge you to oppose these proposals, particularly the "Product Liability Fairness Act," (S. 565) cosponsored by Senators Rockefeller and Gorton, and to oppose cloture, for the following reasons:

Elimination of Joint and Several Liability for Non-Economic Damages—The Rockefeller/Gorton bill would shift costs from parties that caused injuries to injured workers and consumers. By eliminating joint and several liability for non-economic damages, injured workers and consumers whose compensation includes losses related to lifelong excruciating pain, loss of fertility, loss of mobility, and disfigurement may be left to bear the cost of those injuries. Joint and several liability requires that those judged responsible for an injury be responsible for paying the costs of that injury. Elimination of it for non-economic damages unfairly hurts workers and consumers, especially those who don't earn high incomes or are older since their damages often are mostly non-economic.

Caps On Punitive Damages—Rockefeller/Gorton would limit punitive damages to $250,000 or three times economic damages, whichever is greater, and would make it much harder to impose them. Punitive damages, though rarely awarded, are a powerful tool in preventing repetition of preventable injuries. Limiting them would lessen the motivation of corporations to make safe products. As a result, more workers and consumers will be injured.

Statute of Repose—This would make it impossible for a worker injured by defective machinery and equipment to receive compensation from the manufacturer if the machinery and equipment had been on the market for twenty years.

For the above reasons, we urge you to protect workers and consumers by opposing the Rockefeller/Gorton bill and similar legislation and to oppose cloture.

99-059 O—97 Vol. 141 (Pt. 9) 14

Sincerely,

Juana Hernandez, Staff, Immigrant Workers Resource Ctr.; Melanie Kasperian, Vice President, Mass Teachers Association; Edward Kelly, Executive Director, Citizen Action of Massachusetts; Miles Calvey, Business Manager, I.B.E.W. Local 2222; Phil Mamber, President, United Electrical Workers, District 2; John Williams, Executive Director, Mass. Toxics Campaign; John Murphy, Secretary Treasurer, Teamsters Local 122; Richard Reardon, Business Agent, Teamsters Local 25; John O'Connor, Executive Director, Jobs & Environment Campaign; Rand Wilson, Director, Massachusetts Jobs with Justice.

CITIZEN ACTION,
Cambridge, MA, April 20, 1995.

Senator JOHN KERRY,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KERRY: On behalf of the members of Citizen Action of Massachusetts, I strongly urge you to oppose S. 565, and similar product liability bills, and to vote against cloture on them.

There is no "litigation explosion." Defective products cases represent less than one-hundredth of one percent of the total caseload in state courts, according to the National Center for State Courts. Since 1990, total state tort filings have decreased. Nor have punitive damage awards been widespread. Between 1965 and 1990, punitive damages were awarded in less than 15 products liability cases each year, one quarter of which involved asbestos.

S. 565, and similar bills make it more difficult for consumers who obtain an award of damages caused by irresponsible corporate behavior from actually collecting those damages where more than one corporation is responsible for their injuries. In addition S. 565 and similar bills seek to drastically limit the ability of citizen juries to award punitive damages: the kind of damages which deter the production and marketing of unsafe products. At time of decreasing regulatory oversight, the possibility of punitive damages represents a vital pro-consumer bulwark against unsafe and defective products. Punitive damages, because they can be high, make corporations take notice and treat product safety seriously.

S. 565 and similar bills are irresponsible and anti-consumer. I strongly urge you to oppose them and to vote against cloture.

Sincerely,

EDWARD F. KELLY,
Executive Director.

MASSACHUSETTS PUBLIC INTEREST RESEARCH GROUP,
Boston, MA, 24 April 1995.

Hon. JOHN KERRY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KERRY: We are writing on behalf of MASSPIRG's members, and on behalf of all residents of Massachusetts to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, MASSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

DEIRDRE CUMMINGS,
Consumer Program Director.

MICHIGAN CONSUMER FEDERATION,
April 18, 1995.

Hon. CARL LEVIN,
U.S. Senator, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR LEVIN: I appreciated meeting you at the "Teddy Bear Clinic" where you so ably pointed out the threat to public safety posed by the Republican's "regulatory moratorium." Your leadership for consumer safety has always been appreciated.

We need your leadership in another consumer safety area—products liability. With federal cutbacks in regulatory programs, we look to the legal system as one of the few effective means of improving product safety. Time and time again, it has been private lawsuits—or the perceived threat of lawsuits—which has forced corporations to either remove defective products from the marketplace or improve them.

I know you are a fan of "cost-benefit" analyses. So are manufacturers. In a well-known memo, Ford Motor Company calculated that it would cost more to prevent Pintos from exploding than it would pay out in legal expenses. Consequently, many Pinto owners were incinerated. Why would we want to cap the only means of making "cost-benefit" assessments favor consumer safety?

The Michigan Consumer Federation is a member of the Consumer Federation of America. Annually, CFA bestows its highest honor for consumer advocacy—the Philip A. Hart award. We are proud that the nation's largest and most respected consumer organization recognized a Michigan giant and former United States Senator for its most prestigious award. That places a great deal of responsibility for those of us in Michigan.

S. 565 isn't about fairness. It's about corporations wanting to "get away with murder." Let's not tilt the playing field in their favor. Vote for a strong system of individual legal rights for victims of corporate wrongdoing. It helps make products safer for all of us.

Sincerely,

RICK GAMBER,
Executive Vice President.

CITIZEN ACTION,
East Lansing, MI, April 24, 1995.

Senator SPENCER ABRAHAM,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR ABRAHAM: On behalf of the 300,000 members of Michigan Citizen Action, I want to express our strong opposition to the so-called "Product Liability Fairness Act." I urge you to vote against efforts to move this anti-consumer, anti-worker legislation.

There are three major provisions in S. 565 which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, S. 565 eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income.

Third, S. 565 prevents workers and consumers—but not businesses—from recovering for losses caused by defective machines or products over 20 years old.

I urge you to act to prevent passage of this legislation which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing. this bill is not in the best interest of Michigan residents. Vote "NO" on cloture and "NO" on the bill.

Yours Truly,

LINDA A. TEETER,
Program Director.

PUBLIC INTEREST RESEARCH GROUP IN MICHIGAN,
Ann Arbor, MI, April 25, 1995.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN. We are writing on behalf of PIRGIM's members, and on behalf of all residents of Michigan to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PIRGIM is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the right of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from the dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages

will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

TIMEEN WEGMEYER,
Campaign Director.

MINNESOTA COACT,
St. Paul, MN, April 24, 1995.

Senator PAUL WELLSTONE,
Hart Office Building,
Washington, DC.

DEAR SENATOR WELLSTONE: On behalf of Minnesota COACT's 40,000 statewide members, I am writing to urge you to vote "no" on S. 565 and to vote against cloture. As a national leader in the fight for health care reform, you probably recognize that this legislation will seriously undermine the ability of consumers to be protected from and compensated for medical malpractice negligence.

By capping the punitive damages at $250,000 or three times the economic loss (whichever is greater), S. 565 restricts a person's ability to obtain full and fair compensation and dramatically reduces the ability to deter future wrongdoing.

Furthermore, S. 565 eliminated joint and several liability for punitive damages and non-economic loss but not for economic damages. This distinction will aggravate the disparity in awards between high-income earners and low-income earners.

Medical malpractice causes 80,000 deaths and up to 300,000 serious injuries each year according to a recent Harvard Medical Practice Study. For the health and safety of consumers throughout Minnesota, please vote "no" on S. 565 and vote against cloture on the Senate floor.

Sincerely,

JON YOUNGDAHL,
Executive Director.

MISSOURI CITIZEN ACTION,
April 24, 1995.

Senator JOHN ASHCROFT,
Senate Office Building,
Washington, DC.

DEAR SENATOR ASHCROFT, Missouri Citizen Action strongly urges you to vote "no" on Senate Bill 565. In addition, we urge you to vote against cloture when the bill is debated on the Senate floor. As Missouri's largest consumer coalition, we can tell you that this bill could have a major negative impact on the rights, and lives, of the tens of thousands of Missouri consumers and families which we represent.

Caps on punitive damages, such as those in S.B. 565, gut the ability of our civil justice system to threaten real punishment of those whose negligence or greed may tempt them to put a product on the market which could injure us or our family members. Without the threat of real punitive damages, these potential corporate wrongdoers will see damages awards as just another predictable cost of doing business, to be factored into the price of a defective product.

The elimination of joint and several liability for non-economic damages will, likewise, have a negative effect on average Missourians. This provision of S.B. 565 strikes especially at women, children, and seniors.

Clearly this legislation is not in the interest of working Missourians. It is merely an attempt to shield wrongdoers from the consequences of their actions. In that you have consistently voiced a strong opinion in favor of "getting tough" on criminals who prey on our communities, we believe that it would be inconsistent on your part to now vote to protect those whose potential to harm innocent victims in the pursuit of profit. Once again, we urge you to vote "no" on S.B. 565, and to vote against cloture.

Sincerely,

PATRICK HARVEY,
Executive Director.

CITIZEN ACTION,
Lincoln, NE, March 28, 1995.

Senator BOB KERREY,
Hart Office Building, Washington, DC.

DEAR SENATOR: As director of Nebraska Citizen Action, with over 8,000 active members, I want to express our strong opposition to the so-called "Common Sense Legal Reforms Act." The Senate is rushing this bill forward without full debate or time for careful analysis. I urge you to vote against efforts to move this anti-consumer legislation forward, including procedural moves to cut off debate.

This and similar bills pending in the Senate would restrict the ability of injured consumers and workers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent future injuries.

There are two major provisions which are common to all the bills which have been introduced in the Senate and which would have a negative effect on consumers and workers. First, all bills would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, all bills would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income. It defies all principals of fairness to base how we determine compensation for damages, only on a persons yearly salary.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent future wrongdoing.

Sincerely,

WALT BLEICH,
Director.

COALITION FOR ACCOUNTABILITY & JUSTICE,
April 24, 1995.

Hon. J. JAMES EXON,
U.S. Senate,
Washington, DC.

DEAR SENATOR EXON: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of Nebraska.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that has served consumers and the residents of Nebraska exceedingly well. As you noted during our meeting, your efforts at medical malpractice reform is but one example.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

One must also keep in mind that S. 565 must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. S. 565 does nothing to bring the rights and remedies available to Nebraskans up to the proposed federal standards, and yet it limits our ability to shape state law in a way that would address the unique needs and concerns of Nebraska citizens.

We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

John Hansen, President, Nebraska Farmers Union; Carol McShane, Nebraska

Women's Political Network; Jared Teichmeier, President, United Rubber Workers of America Local 286; Linda Burkey, Executive Director, Nebraska Head Injury Association; Walt Bleich, Executive Director, Nebraska Citizen Action; Cristina Sherman, State Coordinator, National Organization for Women; Marv Morrison, Secretary-Treasurer, Communications Workers of America Local 7470; Marty Strange, Program Director, Center for Rural Affairs.

NEW HAMPSHIRE CITIZEN ACTION,
Concord, NH, April 20, 1995.

Senator JUDD GREGG,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR GREGG: I am writing to express my concerns about S. 565—the Rockefeller-Gorton bill. The expressed goal of this bill is to reduce the supposed explosion of product liability lawsuits. It does this by effectively limiting the awards a plaintive could receive: capping punitive damages and eliminating joint and several liability.

I have three problems with this bill. First, I do not think that it will accomplish its goals. I am aware of no evidence that capping awards will in fact reduce the number of suits filed. Capping awards could in fact increase the total dollar amount of liability awards if it removes the incentive for a producer to correct a dangerous flaw in its product, such that more injuries occur and more suits are filed.

Second, I was under the impression that the Republican Party was a supporter of the rights of victims as opposed to criminals. Punitive damages are one way of compensating victims injured through criminal negligence. Protecting the assets of the perpetrator is wrong.

Third is the issue of states' rights. You and your Republican colleagues have gone on and on about returning decision making power to the states. Yet in this bill, by preempting state statutes, you would gather in to the federal government powers that have belonged to the states for over two hundred years. That, sir, is as big a flip-flop as Dick Swett ever made!

I urge you not to support this bill, and not to support any vote for cloture on debate of this bill. Thank you.

Sincerely,

ROBERT D. YAGER, M.D.,

P.S.: I have been sued and lost a case involving punitive damages. Despite that personal experience, I still think this is a bad bill.

NEW JERSEY CITIZEN ACTION,
Hackensack, NJ, April 18, 1995.

Hon. BILL BRADLEY,
Senate Office Building, Washington, DC.

DEAR SENATOR BRADLEY: New Jersey Citizen Action in requesting that you vote "NO" on Senate Bill 565. Additionally we are asking you to vote against cloture. If this bill is passed, it will have a devastating effect on the 115,000 families that are members of N.J.C.A.

By capping punitive damages at $250,000 or three times the economic loss (which ever is greater) the legislation removes "the punishment" that is supposed to be reflected in the damages. It becomes cheaper to pay the damages than to rectify the situation.

Eliminating joint and several liability for non-economic damages discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering—it could also be loss of reproductive capacity, loss of sight or disfigurement.

Obviously this bill is not in the best interests of New Jersey residents. Once again we ask you to vote "NO" on Senate Bill 565 and vote against cloture.

Very truly yours,

PHYLLIS SALOWE-KAYE,
Executive Director.

NEW JERSEY PUBLIC INTEREST
RESEARCH GROUP,
Trenton, NJ, April 24, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: We are writing on behalf of NJPIRG's members, and on behalf of all residents of New Jersey to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, NJPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

ANDY IGREJAS,
Consumer Advocate.

NEW JERSEY TENANTS ORGANIZATION,
Hackensack, NJ, April 20, 1995.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: The New Jersey Tenants Organization (NJTO) opposes any changes in joint and several liability and the imposition of punitive damage caps. This is not reform; it is war on consumers.

Please oppose the tort reform legislation now before the Senate and vote "NO."

Thank you for your anticipated stand in favor of the consumers of the State of New Jersey.

Yours truly,

BONNIE SHAPIRO,
Administrative Director.

CITIZEN ACTION OF NEW YORK,
Albany, NY, April 24, 1995.

Hon. DANIEL PATRICK MOYNIHAN,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR MOYNIHAN: We are writing to urge that you protect victims of dangerous products by voting to be sure that S. 565 never comes to the Senate floor and continuing to oppose S. 565 and any other measures that would strip victims of dangerous products, incompetent doctors or other negligent parties of their fundamental rights to justice and fair compensation.

Those who would vote for S. 565 forget the famous exploding Pinto, a traveling bomb that Ford's bean counters let stay on the road rather than spend a few dollars to fix the gas tank. They would forget the damage to women from the Dalkon shield and breast implants, products that the manufacturers knew might cause harm. They would forget those children who were horribly burned by flammable pajamas. And they would forget the thousands of workers who were exposed to asbestos decades after the manufacturers knew that the material caused cancer.

There are very few cases a year, 15, in which punitive damages are awarded. But the threat of these damages is too often the only barrier to more companies making the cold calculation that making a safe product isn't worth the cost. Artificial caps on punitive damages will result in a slap on the wrist to negligent corporations and expose American consumers to dangerous products.

The provision in S. 565 that would not allow workers or consumers to sue over damages caused by older products, but allows companies to sue, reveals the vicious anti-consumer bias of this bill. If the bill were honestly concerned about the legal system why would it allow businesses to sue but not consumers or workers? The exemption for businesses shows that the authors primary motive is to protect corporations from being punished for the harm their negligence causes to consumers and employees.

We also urge your opposition to changes in joint and several liability. This provision only increases the likelihood that a victim will not be fairly compensated for the injuries and suffering caused by negligence. Those who are the most vulnerable, women, children and the elderly, will lose the most if joint and several liability is eliminated.

Finally, we remain concerned that the Senate will consider establishing a cap on pain and suffering in medical malpractice cases. Such an action would be particularly ironic coming just after well publicized incidents of medical malpractice. The facts remain that, as the Office of Technology Assessment found in a recent report, caps on malpractice awards will have no impact on the nation's health care costs but they will save money for doctors at the expense of victims of gross malpractice.

We urge your continued vigilance on behalf of victims of negligence by voting against cloture for S. 565 and working vigorously to oppose any other measures that would gut the civil justice system.

Sincerely,

RICHARD KIRSCH,
Executive Director.

EMPIRE STATE CONSUMER ASSOCIATION,
Rochester, NY, April 19, 1995.

Hon. ALFONSE M. D'AMATO,
Hart Building, U.S. Senate, Washington, DC.

DEAR SENATOR D'AMATO: I want to express our strong opposition to S. 565, the "Product Liability Fairness Act of 1995." This bill

would restrict the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries.

There are two major provisions of this legislation which would have a negative effect on consumers and workers. First, this bill would set arbitrary limits on punitive damage awards of $250,000 or three times economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Americans' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill would eliminate joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than THE loss of high salaries or investment income. For similar reasons as those described, CFA also urges you to oppose S. 454, "The Health Care Liability and Quality Act" which would severely affect the rights of injured patients.

I urge you to act to prevent passage of this legislation, which would greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing.

Sincerely yours,

JUDY BRAIMAN.

CITIZEN ACTION,
Raleigh, NC, March 14, 1995.

Hon. D.M. LAUCH FAIRCLOTH,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR FAIRCLOTH: On behalf of North Carolina Citizen Action, I would like to express our strong opposition to the so-called "Product Liability Fairness Act", S. 565. I urge you to vote against efforts to pass this legislation, as it is anything but fair to your constituents or to any individual American citizen.

While the proponents of this bill have attempted to cast a "moderate" light on the legislation, painting it as more fair and equitable than proposed legal reforms which came before it, our careful study from the consumer's perspective has revealed that it is neither fair nor equitable to real Americans. Areas of particular concern include:

Punitive damage caps of $250,000 or three times the economic loss. Imposing such caps completely undermines the important deterrent effect which these damages have on corporate wrongdoing. While punitive damages are rarely used, the very threat of that their existence presents has proven to be critical in persuading manufacturers to improve the safety of their products or in actually removing unsafe products from the marketplace. If you undermine this system, American consumers truly will be at the mercy of big business.

Elimination of joint and several liability for non-economic damages. This provision discriminates against the most vulnerable members of our society—women, children, seniors, the poor—whose form of compensation would most likely be in the form of non-economic damages. This legislation says that only the wealthy should be empowered to hold wrongdoers accountable for their egregious behavior. These damages also cover a great deal more than just pain and suffering, as is often thought. They also cover loss of reproductive capacity, loss of sight, and disfigurement. Is it fair to punish individuals who have suffered these tragedies?

S. 565 is not fair, although its name attempts to imply otherwise. It is not fair to the workers, to women, to children, to the real people of this country. It is a one-sided, unjustified and cynical attempt to provide a subsidy to big business at the expense of the American consumer.

We understand that S. 565 will be brought to the floor on Monday, April 24 and a vote on cloture could come within a few days of this. We urge you to cast your vote on behalf of your constituents and all American citizens and oppose S. 565 by voting "NO" on cloture.

Sincerely,

LORI EVERHART,
State Director.

COALITION FOR ACCOUNTABILITY AND JUSTICE,
April 4, 1995.

Hon. KENT CONRAD,
Hon. BYRON DORGAN,
U.S. Senate, Washington, DC.

DEAR SENATORS: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system, and to vote "no" on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By limiting pain and suffering damages in some cases, the bill will severely restrict awards to certain groups—including seniors, women, and children—and favor the rich who, in the case of death or serious injury, have high lost wages, over the rights of low- and middle-income wage earners. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight a civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of North Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockefeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases. Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interest in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Gerrard Friesz, North Dakota Public Employees Association.
Pam Solwey, North Dakota DES Action.
Sherry Shadley, North Dakota Clean Water Action.
Chuck Stebbins, Dakota Center for Independent Living.
Pauline Nygaard, North Dakota Breast Implant Coalition.
Don Morrison, North Dakota Progressive Coalition.
Lani Weatherly, Laborers International Union, Local 580.
Jude M. Reilly, Boilermakers Local 647.
Gary L. Nelson, Ironworkers Local 793.
John Risch, United Transportation Union.
Dexter Perkins, Sierra Club, Agassiz Basin Group.
Gary McKenzie, Plumbers and Pipefitters Local 338.
Rev. Jack Seville, United Church of Christ (organization for identification only).
Dean Cypher, Teamsters Local 116.
Al Thomas, Teamsters Local 123.
Norman Stuhlmiller, (former chairperson, Legislative Committee, North Dakota AARP).
Logan Dockter, Plumbers and Pipefitters Local 795.
Jeff Husebye, Doug Swanson, Workers Against Inhumane Treatment.

CITIZEN ACTION,
April 24, 1995.

Members of the U.S. Senate, Washington, DC:

DEAR SENATORS: I am writing on behalf of Ohio Citizen Action, Ohio's largest consumer and environmental organization, to urge Members of the Senate to oppose S. 565 and to vote against cloture. There are a number of reasons for our opposition to this bill, but we will briefly mention only two.

First, the cap on punitive damages would unquestionably undermine the potential for such assessments to truly punish wrongdoers. While punitive damage assessments are rare in product liability cases, they often are the only means for citizens to stop the reckless behavior of a wrongdoer. With the arbitrary cap, not only would future punitive damage assessments not adequately punish the wrongdoer, but companies could calculate whether it would be more cost-effective to produce a safe product or risk punitive damages.

Second, the statute of repose would deny workers and consumers their right to seek compensation if they are injured by a product that is more than twenty years old. It is, by no means, uncommon for workplace equipment to exceed this limit. At the same time, however, businesses are exempt from this restriction. The company can still sue for commercial losses.

S. 565 would be a giant step backwards in a legal system that now works reasonably well to protect average Americans. We urge you to oppose S. 565 and to vote against cloture.

Thank you for your consideration.

Sincerely,

SHARI WEIR,
Consumer Issues Director.

OHIO PUBLIC INTEREST RESEARCH GROUP,
Columbus, OH, April 25, 1995.

Hon. MIKE DEWINE,
U.S. Senate, Washington, DC.

DEAR SENATOR DEWINE: We are writing on behalf of Ohio PIRG's members, and on behalf of all residents of Ohio to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, Ohio PIRG is a statewide, nonprofit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly *unfair* to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

AMY SIMPSON,
Campaign Director.

OREGON STATE PUBLIC INTEREST RESEARCH GROUP,
Portland, OR, April 25, 1995.

Hon. MARK HATFIELD,
U.S. Senate, Washington, DC.

DEAR SENATOR HATFIELD: We are writing on behalf of OSPIRG's members, and on behalf of all residents of Oregon to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, OSPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. It caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

MAUREEN KIRK,
Executive Director.

VICTIMS AGAINST LETHAL VALVES,
Pittsburg, PA, April 19, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: As founder and leader of V.A.L.V. (Victims Against Lethal Valves) I am writing to you for all implanted victims of the Bjorg/Shiley ConvexoConcave heart valve to urge you to vote against bill S. 565.

We oppose this legislation as it definitely limits the rights of consumers in our civil justice system. We believe bill S. 565 is an anti-consumer legislative move that will only enhance the rights of big business, i.e., manufacturers. We believe that this bill will only encourage manufacturers to have a stronger attitude of uncaring towards the products they produce and place in the marketplace for the consumer. Today, with workers' relaxed attitudes and work ethics it would hardly be a feasible idea to give the manufacturers a freer hand in the quality control of products. This is a time when we need stronger controls over big business, not the consumer. The consumer is being hurt enough as it is with the dangerous quality of products that is being turned out to them now.

Injuries that are the result of a manufacturer's flaw should be compensated to the injured. When products are marketed as being wonderful and safe in fancy, expensive advertisements to draw in the consumer to purchase, the manufacturer should be responsible for any consequence after the sale of their product if it has been flawed from the manufacturing process.

V.A.L.V. members throughout the state of Pennsylvania strongly urge you to vote against bill S. 565 as well as similar legislation and to vote against cloture.

We thank you for considering our fears.

Respectfully yours,

ELAINE S. LEVENSON,
Founder.

CITIZEN ACTION/
PENNSYLVANIA CHAPTER,
April 21, 1995.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC

DEAR SENATOR SPECTER: On behalf of our 40,000 members in Pennsylvania, we are writing to express our strong opposition to S. 565, the so-called "Product Liability Fairness Act" sponsored by Senators Rockefeller and Gorton. We urge you to oppose any effort to move this anti-consumer, anti-worker legislation forward, including procedural moves to cut off debate.

S. 565 would drastically limit the ability of injured consumers and workers to obtain full and fair compensation, and would restrict the ability of citizen juries to impose adequate deterrents to prevent future injuries.

Specifically, S. 565 would place caps on punitive damage awards of $250,000 or three times economic damages. Such awards, while rare, are designed to punish corporations that intentionally or recklessly disregard the safety of consumers, and to deter other corporations from such behavior. Placing arbitrary limits on punitive damages will only serve to encourage such behavior, placing consumers at greater risk.

S. 565 would also eliminate joint and several liability for noneconomic damages, making it difficult for consumers to recover costs related to injuries such as the loss of child-bearing capacity, loss of sight or limb, or disfigurement. This provision places a greater value on lost income, thereby discriminating against women, children, and senior citizens.

Finally, this bill would prevent workers and consumers—but not businesses—from recovering damages for losses caused by defective machines or products that are more than 20 years old.

We strongly urge you to protect the legal rights of consumers and workers throughout Pennsylvania by voting against passage of S. 565 and voting against cloture. Thank you for your consideration.

Sincerely,

LAUREN TOWNSEND,
Philadelphia Area Director.

JENNIFER O'DONNELL,
Pittsburgh Area Director.

PENNSYLVANIA PUBLIC INTEREST RESEARCH GROUP,
Philadelphia, PA, April 24, 1995.

Protect Victims of Dangerous Products—Oppose Cloture and Vote No on S. 565.

Hon. ARLAN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: We are writing on behalf of PennPIRG's members, and on behalf of all residents of Pennsylvania to urge your strong opposition to proposed legislation, S. 565, that would eviscerate the rights of victims of dangerous and defective products. As you know, PennPIRG is a statewide, non-profit, nonpartisan consumer and environmental advocacy group that has fought to protect the rights of consumers for many years.

Each year, more than 28 million Americans are injured by consumer products and 21,000 are killed. Why should this Senate pass legislation that limits the legal rights of victims at the same time as it is cutting back funding for the federal agencies that are supposed to protect consumers from these dangerous products?

S. 565, the so-called Product Liability "Fairness" Act is, in fact, manifestly unfair to consumers. We have numerous problems with the bill. Its caps on punitive damages will encourage faulty product design. Its limits on pain and suffering damages unfairly and unjustly restrict awards to women, children and senior citizens who are harmed. Its preemption of numerous stronger state laws is unfair to all consumers.

These anti-consumer provisions of S. 565 make it unacceptable. Yet the Senate must

also consider that, if passed, S. 565 would have to be reconciled with the even more egregious and extreme House-passed bill. H.R. 1075, in addition to the measures above, arbitrarily caps pain and suffering awards in medical malpractice cases and establishes an automatic punitive damages shield for FDA-approved products. Worse, the House cap on punitive damages extends to all civil lawsuits, not only to product liability cases.

We urge you to vote against cloture on S. 565, against S. 565 and against any conference measure restricting the rights of consumers. We look forward to hearing your views on this important legislation. Please contact me if you or your staff have any questions.

Sincerely,

STEPHANIE HAYNES,
Campaign Director.

DES ACTION,
Nescopeck, PA, April 24, 1995.

DEAR SENATOR RICK SANTORUM: On behalf of 480,000 DES exposed in Pa. we deplore you to oppose S.B. 565.

We still deserve to have a trial by jury and also awarded as they see fit. That means no PS!

Common Sense Legal Reform was written to protect major corporations and forgetting the real victims. Such as 10 million DES exposed.

Our spouses deserve to receive compensation for * * * several liability.

DES Action Pa. would urge you to prevent passage of any legislation, which would greatly restrict the ability of injured consumers to be compensated fully and * * * injured to act to prevent further wrongdoing.

Sincerely,

MARY JEAN GRECO GOLOMB.

PENNSYLVANIA AFL–CIO,
Harrisburg, PA, April 6, 1995.

Re S. 565—Product Liability.

Hon. RICH SANTORUM,
U.S. Senate, Dirkson Bldg., Washington, DC.

DEAR SENATOR SANTORUM: We are writing to urge your strong opposition to S. 565, reforms to the Product Liability Law. S. 565 will have its most dramatic effect on working men and women who are injured by defective machinery. It is our understanding that 60% of the Product Liability claims arise from workplace injuries.

First and foremost, we are concerned that weakening the Product Liability Law will undermine safety in the workplace. As a practical matter, it is the threat of a lawsuit that encourages manufacturers to design and produce safe machinery. OSHA, which could play some role, has been ineffective in regulating in this area and is likely to continue to be ineffective. We must look to the Product Liability Law as the single most important force for safety machinery in the workplace.

The specific changes proposed by S. 565 will not only undermine safety, but unfairly deny injured workers compensation for loss of body part or body function.

Several issues are of priority concern for Pennsylvania workers:

(1) *Twenty-year Statute of Repose:*

The statute of repose would deny the right to file a claim if a worker is injured by machinery more than 20 years old. Pennsylvania, as you know, is a mature industrial state. Many of our workers are working with machinery that is older than 20 years.

To cut off their rights by a fixed time limitation is artificial and will deny those injured any remedy. The age of the machine should be taken into account in determining the defect, but the proposed change is inflexible and unfair. Finally, it will create a market for used machinery rather than encourage new manufacturing of safer equipment.

(2) The overriding of both the Federal Employers' Liability Act and the Longshoremen's and Harbor Workers Compensation Act will hurt those covered by these laws in Pennsylvania—specifically our Longshoremen and Railroad and Airline workers.

(3) The elimination of joint and several liability could end up leaving injured workers with no responsible party to pay for a judgement and award.

(4) The cap on punitive damages again is arbitrary and will undermine the incentive to produce safe machinery. The cap of $250,000 is artificially low and fails to consider the reality that few punitive damages are awarded under current Pennsylvania law.

The real purpose of punitive damages is to control outrageous conduct on the part of manufacturers.

These are just some of our major concerns with S. 565.

We urge you to strongly oppose this legislation and vote in support of encouraging the manufacture of safe products. Each year, 150,000 Pennsylvanians experience serious workplace injuries and close to 5,000 occupationally caused deaths occur. Many of these injuries and diseases are caused by defective products. S. 565 will only add to the pain and suffering of those who go to work each day with an expectation of returning home safe.

Thank you.

Sincerely,

WILLIAM M. GEORGE,
President.
RICHARD W. BLOOMINGDALE,
Secretary-Treasurer.

COALITION FOR ACCOUNTABILITY & JUSTICE
April 24, 1995.

Hon. LARRY PRESSLER,
Hon. THOMAS DASCHLE,
U.S. Senate, Washington, DC.

DEAR SENATOR: We, the undersigned organizations, urge you to oppose efforts to weaken America's civil justice system. We urge you to vote against cloture on S. 565, the product liability measure sponsored by Sens. Gorton and Rockefeller, or any other legislation that would weaken the rights of the citizens of South Dakota.

By restricting the rights of victims of dangerous and defective products, this measure undermines the role of the civil justice system in redressing damages and deterring harmful behavior. By giving "non-economic" damages second-class treatment, the bill discriminates against populations with less earning power, specifically women, children, seniors and low- and middle-income workers. Under S. 565, the U.S. would have a two-tiered system of justice where rich, high-salaried workers would be accorded better treatment and higher damage awards than the rest of us. Finally, by establishing brand new federal rules for product liability cases, S. 565 removes from state authority and oversight and civil justice system that, despite the hyperbole of the big business interests backing this legislation, has served consumers and the residents of South Dakota exceedingly well.

S. 565 is far more restrictive than last year's Senate product liability bill. First and foremost, the bill establishes a cap on punitive damages of three times economic loss, or $250,000, whichever is greater. Under this cap, corporations will be punished more if they injure or kill a corporate executive than if the same conduct harms a child, a senior citizen, or a schoolteacher. How can this be fair? In addition, the bill establishes a 20 year limit on lawsuits for capital goods—in last year's bill, the limit was 25 years. Moreover, S. 565 adds protections for manufacturers of raw materials in medical devices and for rental car companies, and reduces manufacturer liability for misuses or alterations made to the product by anyone else—provisions that were not in last year's bill.

Even if one reasonably believes that the measure introduced by Sens. Gorton and Rockfeller is sound public policy (which we do not), it must ultimately be reconciled with the extreme revisions to the civil justice system recently adopted by the House of Representatives. H.R. 956, in addition to the provisions outlined above, enacts an arbitrary cap on pain and suffering awards in medical malpractice and cases involving drugs and medical devices, at the same time it offers an automatic punitive damages shield for products that have received FDA approval. In addition, the House measure extends the cap on punitive damages to all civil lawsuits, and establishes an arbitrary 15 year statute of repose for product liability cases.

Passage of either of these measures, or a combination of the two, would cause grievous harm to the people who have elected you—and depend on you—to represent their interests in Congress. We urge you to oppose any effort to weaken or federalize product liability laws, and to vote "no" on cloture on S. 565, and on any conference committee reported-measure restricting the rights of consumers.

Sincerely,

Mike Coffey, AFSCME; Bob Burns, South Dakota State University; Jeanne Koster, South Dakota Peace and Justice Center; Jack E. Dudley, South Dakota AFL–CIO; Roann Redlin, South Dakota Coalition Against Domestic Violence; Phyllis Bitterman, United Paperworks International Union; Karen Fogas, East River Group Sierra Club; David Feller, IBEW, Local 426; Charon Asetoyer, Native American Women's Health and Education Center; Jim Larson, UFCW Local 304A; Roann Redlin, South Dakota Advocacy Network; Sam Clauson, Black Hills Group Sierra Club; Mary Kirkus, South Dakota DES Action; Charon Asetoyer, Native American Women's Reproductive Rights Coalition; Darrell Drapeau, Yankton Sioux Tribe; Rick Davids, United Transportation Union.

CITIZEN ACTION,
Nashville, TN, April 20, 1995.

Hon. FRED THOMPSON,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR THOMPSON: Greetings from Nashville. I am director of Tennessee Citizen Action, a grassroots consumer group with over 5,000 members across the state. I am writing to express Citizen Action's strong concerns about S. 565, the product liability bill to be considered next week on the Senate floor.

It is our view that this legislation would have serious implications for the health and safety of your constituents. S. 565 would impose federal requirements, for the first time in over two hundred years, on an area which

has been under state authority. In doing so, we believe that it would limit both the ability of injured consumers to obtain fair compensation and the ability of citizen juries to hold guilty parties accountable for their actions. As a result, the incentives which have convinced many companies to improve the safety of their products will be lessened.

While there are a number of troubling provisions in S. 565, I would like to raise two key issues. First, the bill would destroy the ability of citizen juries to impose penalties on wrongdoers in order to prevent future injuries. Punitive damages are rarely used. In fact, over the last 25 years, punitive damages have been awarded in less than 15 cases each year (less than 11 cases excluding asbestos cases). But punitive damages have proven to be critical in persuading manufacturers to improve the safety of their products or remove unsafe products from the marketplace. By placing arbitrary caps on awards, S. 565 would make it virtually impossible for citizen juries to act to protect society from future harm. At a time when Congress is considering limits on federal regulation, it makes little sense to further erode the ability of people to use the courts as a way to improve the safety of the marketplace.

Second, S. 565 would establish a discriminatory legal system in which the level of compensation is based not on the level of the injury, but on the economic status of the injured consumer. By eliminating joint and several liability for non-economic damages, the bill states that it is not important to compensate individuals for having to live with excruciating pain, disfigurement, blindness, or loss of the ability to bear children.

Given these and other provisions, Tennessee Citizen Action believes that the passage of S. 565 would be detrimental to consumers and the nation. We appreciate your consideration of our views and look forward to learning your position on these important issues.

Sincerely,

C. BRIAN MCGUIRE,
State Director.

TEXAS CITIZEN ACTION,
Austin, TX, April 23, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: We are writing you to ask for your vote against cloture on S.565 the "Unfair Product Liability Act" introduced by Senator Rockefeller. We are extremely concerned about the impact this will have on the safety standards of everyday products for consumers and innocent citizens. We believe there are several provisions of the bill which will eliminate the consumers ability to hold wrongdoers accountable for their actions, and limit innocent victims recourse to fully recover for damages they have accrued.

Capping punitive damages will do nothing to increase safety standards for innocent consumers. By limiting punitive damage awards to $250,000 or three times economic damages you are creating a nuisance expense for multi-billion dollar companies such as Ford Motor Company or Dow Chemical. This is creating a predictability in the market place for the minute number of companies who act negligently allowing them to calculate their risk for producing a less than safe product and further lets them rest assured they will never be held liable past a certain dollar amount.

S.565 prevents consumers from holding manufacturers of products which cause significant harm or injury accountable if the product is older than 20 years. Many products are intended to last longer than 20 years. This law however, would eliminate all consumer rights to be made whole if a 20 year old product caused significant harm or damages. This is an example of corporate wrongdoers being protected at the expense of consumers protection.

The elimination of "Joint and Several Liability" is a slap in the face to innocent individuals, families, and communities. Allowing guilty defendants off the hook without having to make innocent victims 100% whole is a disgrace. We will without a doubt see victims paying for portions of their damages even when they were completely without fault. This will not only affect individuals but likewise families, communities, cities, and states. We will see wrongdoers getting off free of charge while cities, towns, and families pick up the tab for the irresponsible behavior of others.

Texas Citizen Action has a membership of well over 150,000 citizens. These people have joined our organization because they believe in the positions we take on consumer protection issues. The passage of S.565 will be a major step backwards for individuals and communities and their rights to hold others accountable for wrongs they may commit. We ask you to vote against cloture on S.565 for the citizens of Texas.

Sincerely,

DANIEL LAMBE,
Program Director.

DEFENDERS OF THE RIGHTS OF TEXANS,
Austin, TX, April 24, 1995.

Re S. 565.

Hon. KAY BAILEY HUTCHISON,
U.S. Senate, Washington, DC.

DEAR SENATOR HUTCHISON: Defenders of the Rights of Texans (DRT) is asking you to vote against cloture on S. 565, Sen. Rockefeller's "Unfair Product Liability Act." This bill will adversely impact the safety standards of products which we consumers utilize on a daily basis. We strongly feel that victims of unsafe products must retain the ability to hold accountable those who produce products which kill and maim. Limiting damages does not protect consumers, it protects manufacturers of products that injure consumers. That should not happen!

The effect of eliminating some of the current protections in the law will be to make the victim pay twice, even when they contributed nothing to the accident or injury. If Congress eliminates "Joint and Several Liability", you will make it difficult for your constituents to recover fully from their misfortune. The only pain and suffering you will be eliminating is that of the offending party. We support victims' rights, not the rights of those corporations or individuals who do not want to take responsibility when their products harm the American public.

We oppose capping punitive damages because we know that it takes significant awards to get the attention of manufacturers who continue to foist its products on an unsuspecting public years after the corporation knows the product to be unsafe. Why Congress would consider rewarding such unacceptable behavior is beyond our organization's comprehension.

Defenders of the Rights of Texans is a coalition of individuals and organizations—consumer, environmental, worker, academic, clergy, student, and victims—who oppose sacrificing our rights on the alter of corporate greed. We ask you to represent our interests by voting against cloture on S. 565.

Sincerely,

BOB COMEAUX,
San Antonio, TX.

VIRGINIA NATIONAL ORGANIZATION FOR WOMEN,
April 15, 1995.

Hon. CHARLES ROBB,
U.S. Senate, Washington, DC.

DEAR SENATOR ROBB, Virginia N.O.W., represents some 20,000 Virginia women. We are writing to urge you to vote no on cloture and no on S. 565 and any other measure that restricts individual legal rights.

S. 565, the "Product Liability Fairness Act", is in fact, unfair. By limiting non-economic damages, it give wealthy individuals and corporations greater rights than middle-income citizens and families. Additionally, S. 565 transfers authority for the civil justice system from the states to the federal government. States know better how to serve its individual citizens and the issues that impact the citizens than the Washington bureaucracy. Whatever happened to the idea of states' rights and limiting the power of the federal government? S. 565 caps pain and suffering awards on medical malpractice suits. Why single out a particular type of lawsuit to cap awards?

Virginia N.O.W. has supported many women who have filed lawsuits, for both international and negligent injuries. During the 1995 legislative session we along with other citizens groups such as the VTLA, NAACP, ACLU, LofWV, worked hard to obtain a compromise on the Virginia Human Rights Act. A bill which passed the legislative session only to be vetoed by the Governor. The bill reverses the Lockhart decision, which basically prevents a small business employee from filing a lawsuit based on race, color, sex or national origin. Additionally, VA N.O.W. supports lawsuits for sexual harassment, defective products, product liability, employment discrimination and of course intentional injury. Economic justice as well as civil justice must be preserved. S. 565 seeks to destroy both, please vote "no" on S. 565.

People all across America are closely watching the new Republican majority in Congress in an effort to determine whether it truly represents the people or big business. Surely, the outcome and deliberations of S. 565 will provide an answer.

Sincerely,

DULANEY S. NICKERSON.

CITIZEN ACTION,
Charlottesville, VA, April 17, 1995.

Hon. CHARLES S. ROBB,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR ROBB: I am writing on behalf of Virginia Citizen Action and its over 50,000 members to ask you to oppose S. 565, the "Product Liability Fairness Act." We would ask you that you do whatever is necessary to defeat this bill, including voting against any effort invoke cloture on debate.

Senator, this bill would make America a much more dangerous place for all of us. By capping punitive damages, this bill will send a signal to corporate wrongdoers that they can escape any real punishment for making and selling products that will kill or injure innocent people. S. 565 would eliminate the deterrent effect of punitive damages and remove one of the real protections Americans have had for over 200 years.

This bill is anything but fair. By eliminating joint and several liability for non-economic damages, it discriminates against women, children and seniors. Non-economic damages are not just pain and suffering. What about a women's loss of the ability to bear children or a child's disfigurement for life!

Senator, S. 565 is not "moderate" and it is not "fair". We hope that you will work to defeat this bill and protect every Virginian and every American from those special interests who want to escape responsibility for their actions at the expense of the health and safety of the American people.

Sincerely,

MARC WETHERHORN,
State Director.

VIRGINIA CITIZENS CONSUMER COUNCIL,
Yorktown, VA, April 25, 1995.

Re S. 565.

Hon. CHARLES S. ROBB,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROBB: The Virginia Citizens Consumer Council strongly urges you to oppose S. 565, the "Product Liability Fairness Act of 1995. This bill will do irreparable harm to Virginia consumers by restricting the ability of injured consumers to obtain full and fair compensation and for citizen juries to impose adequate deterrents to prevent further injuries. Corporate wrongdoers must be held accountable when consumers are harmed by the products they buy as a matter of simple justice and to foster confidence in the American marketplace.

Two major provisions of this legislation will have a negative impact on consumers and workers. First, this bill sets arbitrary limits on punitive damage awards of $250,000 or three times the economic damages, reducing the ability to deter corporations from inflicting harm on others and threatening Virginians' economic security and well-being. At a time when Congress is talking about increasing personal responsibility, it makes no sense to reduce the responsibility of corporations guilty of manufacturing or selling dangerous products.

Second, this bill eliminates joint and several liability for non-economic damages, making it difficult for consumers to recover costs related to injuries such as the loss of reproductive capacity, loss of sight, or disfigurement. Those injuries deserve to be compensated and should not be treated as less important than the loss of high salaries or investment income. For similar reasons, VCCC urges you to oppose S. 454, "The Health Care Liability and Quality Assurance Act" which would severely affect the rights of injured patients.

VCCC urges you to act to prevent passage of this legislation, which will greatly restrict the ability of injured consumers to be compensated fully and for juries to act to prevent further wrongdoing. Virginia consumers count on you to act in our best interest by voting NO on this anti-consumer, auto-worker bill. Please let me know the outcome of the Senate votes on S. 565 and S. 454 and how you cast your votes. Thank you.

Sincerely,

JEAN ANN FOX,
President.

WASHINGTON CITIZEN ACTION,
STATE HEADQUARTERS,
Seattle, WA, April 19, 1995.

Hon. SLADE GORTON:

On behalf of our 42,000 members statewide and our 20 affiliate community, church, labor, and senior organizations, Washington Citizen Action urges you to oppose Senate Bill 565 and to vote against cloture. This bill is one of the most anti-consumer pieces of legislation to make it to the Senate floor in decades. Please do all that you can to stop S. 565 from passing.

The arbitrary caps on punitive damages would eliminate the incentive to produce safe products and would allow negligent corporations to operate with little to no accountability. S. 565 will undoubtedly result in a multitude of injuries, disfigurements, and deaths. In addition, these limits will take away all recourse society has to punish wrongdoers that knowingly and repeatedly maim and kill people with deadly products and negligent actions.

By eliminating joint and several liability for non-economic damages, S. 565 would weaken the ability of ordinary Americans to receive fair compensation when they are injured by unsafe products and practices. The bill is unfair to women, children, seniors, working families, small businesses, and lower to middle income Americans. Victims and their families will be rendered unable to receive adequate compensation for their injuries while the guilty parties are let off the hook. This is not our idea of American justice.

In America, the courts have proven to be the major protection citizens have against negligent corporations and unsafe products. We cannot afford to let our civil justice system be dismantled by the provisions of S. 565. Vote NO on S. 565! Vote NO on cloture!

Sincerely,

DAVID WEST,
Executive Director.

WEST VIRGINIA-CITIZEN ACTION GROUP,
Charleston, WV, April 24, 1995.

Re Proposed legislation concerning Civil Justice System (S. 565).

Hon. JOHN D. ROCKEFELLER, IV,
U.S. Senate,
Washington, DC.

DEAR SENATOR ROCKEFELLER. On behalf of the twenty thousand members of the West Virginia-Citizen Action Group (WV-CAG), I am writing this brief letter to encourage you to rethink your support for S. 565. However well-intentioned this legislation may be, I honestly believe that the potential—and unintended—consequences are so great as to offset any perceived benefits.

I realize, of course, that the House-passed "Common Sense Legal Reform Act" is more draconian than S. 565. This does not ameliorate the many deficiencies contained in the Senate bill, including the two most egregious (as follows):

By capping punitive damage caps at $250,000 or three times the economic loss (whichever is greater), the proposed legislation removes the "punishment" that is supposed to be reflected in damages. As a result, it will become cheaper in many instances to pay the damages than to rectify the problem.

By eliminating joint and several liability for non-economic damages, the proposed legislation unfairly discriminates against women, children, and seniors. Non-economic loss is much more than pain and suffering; it can also be loss of reproductive capacity, loss of right or disfigurement.

After studying this, and related tort reform proposals for many year, we are convinced that such efforts are contrary to public policy and will jeopardize the hand-earned rights of injured West Virginians. Accordingly, I would like to urge you to reconsider your position and fight, as you have done so often in the past, for the rights of West Virginia consumers.

Thank you very much for your time and consideration. I hope to see and/or talk with you again soon. If you need any further information, please feel free to contact me.

Sincerely,

STATE SENATOR DAVID GRUBB,
Executive Director.

WISCONSIN CONSUMERS LEAGUE,
Milwaukee, WI.

Re SB 565 and 454.

Senator HERBERT KOHL,
U.S. Senate,
Washington, DC.

DEAR SENATOR KOHL: We write to urge your opposition to the so-called "Common Sense Legal Reforms Act" submitted as part of the Contract with America. This package of bills would substantially modify existing product liability and medical malpractice laws. It is largely unsupported by the vast majority of the rigorous evidence which has been developed on these topics. Rather, it is seemingly being swept along on a wave of anecdote, innuendo and, in some cases, outright untruths.

There can be little doubt that product liability and medical malpractice laws have evolved to reflect emerging technologies. They have had the desired effects of modifying behavior to the optimum end of preventing injury to consumers and workers. The claims regarding the alleged stultifying effects of these bodies of common law are generally unsupported by credible, systematic evidence. For example, the work of Professor Galanter, at the UW Law School, compellingly refutes allegations regarding any alleged 'litigation explosion'. The punitive damages which S. 565 would limit are only relatively rarely awarded. Such 'sledge-hammer' approaches to "reforming" such legal standards, while politically satisfying, are only coincidentally related to thoughtful policy-making.

It is, in our view, remarkably arrogant for legislators to substitute their prospective judgments regarding equitable outcomes for specific factual cases yet to arise for the judgment of juries, which, by definition, can examine each case on its own unique, and prospectively unknowable, facts. How can anyone think they can be more fair regarding situations yet to occur than can juries with the benefit of hindsight?

We repeat our opposition to these unnecessarily broad attempts to weaken the preventative impacts of the common law.

Very truly yours,

JAMES L. BROWN,
President.

WISCONSIN CITIZEN ACTION,
Milwaukee, WI, April 21, 1995.

Hon. RUSS FEINGOLD,
U.S. Senate, Hart Senate Office Building,
Washington, DC.

DEAR SENATOR FEINGOLD: On behalf of our 103,000 members and our coalition of 110 labor, senior, religious, environmental, women's, farm and community organizations, we are writing to urge you to oppose S. 565 and to vote against cloture. We very much appreciated your help last year in the defeat of S. 687, this bill's predecessor. We're confident we can count on you again.

This bill is very similar to the product liability "reform" Bob Kasten used to push when he represented Wisconsin in the United States Senate. We like to think that one of the reasons why Wisconsin voters chose not to re-elect Bob Kasten to the Senate is because they repudiated his consistently anti-consumer positions. S. 565 is similarly out of step with the interests of Wisconsin consumers.

The provisions in this bill cannot claim to be "moderate." A punitive damage cap of $250,000 or three times the economic loss to a victim of an injurious product is no more than a slap on the wrist to the corporations responsible for the deaths and injuries

caused by products like the Ford Pinto, the Dalkon Shield, silicone-gel breast implants and flammable baby pajamas. The manufacturer of the "Slip 'N' Slide" water slide, which caused a 35-year old Wisconsin mechanic to break his neck, become temporarily quadriplegic and suffer permanent spasms, would have had its punishment reduced to one-thirtieth of what a jury thought appropriate. The U.S. Senate would be changing the punishment so that it cannot possible fit the crime in an era of public sentiment to get tough on wrongdoers.

We have no idea how many similar horror stories like those are waiting to happen. Corporate wrongdoers would face a dollar and cent deterrent too cheap to stay their pursuit of profit without regard for consumer health and safety. The temptation for corporations to proceed with dangerous products, even if they are eventually found guilty in a lawsuit, would get that much easier. S. 565 will weaken the ability of our civil justice system to act as both deterrent and remedy.

The elimination of joint and several liability for noneconomic damages discriminates against the most vulnerable populations in our society—women, children and seniors. These are the members of our society who are usually forced to claim noneconomic losses, and these constituencies would now be forced to shoulder the burden of being only partially compensated. Noneconomic damages include the loss of reproductive capacity, loss of sight and permanent disfigurement, not just "pain and suffering." It is simply unfair that a party found to be negligent should not be required to make these vulnerable people whole after they have been injured.

The U.S. Consumer Product Safety Commission once estimated that some 33,000,000 people are injured by defective or dangerous products every year. 29,000 of them die. Only 1.6% of the injured parties sue. S. 565 solves no problem in our civil justice system, but it will create a very real human toll if it is allowed to pass. We respectfully urge you to vote against the bill and to vote against cloture.

Thanks once again for your outstanding leadership in defeating the anti-consumer product liability "reform" bill in last year's Congress. We appreciate all your help in continuing that effort by defeating this bill again, albeit in a tougher political climate. Thank you for attention in this matter.

Sincerely,

LARRY MARX,
Executive Director.

CENTER FOR PUBLIC REPRESENTATION, INC.,
Madison, WI, April 21, 1995.

Re Senate bill 565.

Senator HERB KOHL,
Washington, DC.

DEAR SENATOR KOHL: As you know S. 565, the misleadingly-named "Common Sense Product Liability and Legal Reform Act of 1995" will soon be considered by the Senate. As one of the major consumer advocacy groups in Wisconsin, we urge you to oppose this anti-consumer measure.

While certain aspects of our tort system are certainly in need of reform, this bill totally misses the mark. Instead of protecting consumers from some of the excesses of our legal system, it would protect manufacturers of defective products from assuming full responsibility for their actions. Seizing upon such highly publicized and distorted cases like the "burning McDonald's coffee" proponents of this measure (as well as similar proposals in numerous state legislatures including Wisconsin) would eviscerate the ability of our legal system to effectively enforce rules on product safety and punish those who violate them.

The proposed restrictions on punitive damages are completely counter-intuitive. By encouraging corporations to produce safe products, punitive damages (which, insurance industry rhetoric notwithstanding, are rarely awarded by juries or upheld on appeal) actually help corporations *save* money. Safe products mean fewer, not more lawsuits. Safe products mean fewer, not more medical insurance claims filed by consumers. Safe products mean fewer government recalls. And safe products mean an improved quality of life for all consumers.

The elimination of joint and several liability for non-economic damages is also misplaced. On first blush, this common law concept may seem unfair; why should one corporation that is only slightly liable have to pick up the tab for a more culpable corporation that happens to be insolvent? But when you look closer, joint and several liability *is* the fairest resolution to a difficult dilemma. It looks at all of the parties involved in a products liability lawsuit and decides that the costs should be spread so as to fully compensate the victim who, after all, is the only innocent party. And since non-economic damages are frequently awarded to the most vulnerable members of society; the poor, young children, senior citizens, this provision would affect such groups disproportionately.

The elimination of liability for products more than twenty years old is also unfair to consumers. Again, this provision would disproportionately harm the most vulnerable consumers, since they rely more heavily on older, used products. The anti-consumer nature of this bill is especially apparent in this provision, since it exempts companies who suffer commercial losses.

Another particularly disturbing provision in S. 565 from the Wisconsin perspective is its preemption of state consumer protection laws. As you know, Wisconsin is a national leader in the area of consumer protection. Its well-deserved reputation in this area has been built up over many decades. S. 565 would tarnish that image and bring Wisconsin down to the lowest common denominator in protecting its citizens from consumer abuse.

There are other consumer-unfriendly aspects to S. 565, including its exemption from liability for the sellers of products and the special treatment provided for suppliers of materials for medical devices. Moreover, the bill exempts corporations from many of the restrictions on damages which it imposes on individual consumers.

Consumer groups in Wisconsin and around the country have fought long and hard over the past few decades to insure that consumers have access to safe and effective products. S. 565 would annul much of this hard work in one fell swoop. On behalf of all of Wisconsin's consumers, we urge you to oppose it.

Thank you.

Yours truly,

STEPHEN E. MEILI,
Director, Consumer Law Clinic.

Mr. HOLLINGS. There it is. I did not want to really fill up the RECORD, but every responsible, credible consumer entity in any of the 50 States is opposed to this initiative, and the other side knows it. But they come around and talk balance and they talk consumers and they say you cannot produce products.

I ask unanimous consent to insert in the RECORD these two advertisements by the pharmaceutical companies, February 23, 1995, and April 5, 1995, in the Washington Post.

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

[From the Washington Post, Feb. 23, 1995]

DRUG COMPANIES TARGET MAJOR DISEASES WITH RECORD R&D INVESTMENT

Pharmaceutical companies will spend nearly $15 billion on drug research and development in 1995. New medicines in development for leading diseases include: 86 for heart disease and stroke, 124 for cancer, 107 for AIDS and AIDS-related diseases, 19 for Alzheimer's, 46 for mental diseases, and 79 for infectious diseases.

[From the Washington Post, Apr. 5, 1995]

WHO LEADS THE WORLD IN DISCOVERING MAJOR NEW DRUGS?

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home, the drug industry has been making 9 out of every 10 new drug discoveries. So when a breakthrough medicine is created for AIDS, heart disease, Alzheimer's, stroke, cancer or any other disease, chances are it will come from America's drug research companies.

Mr. HOLLINGS. Just the one in February, one statement:

Pharmaceutical companies will spend nearly $15 billion on drug research and development in 1995.

According to the Senator from Washington, they cannot spend. They just cannot work anymore with this law. And right here in April:

Between 1970 and 1992, close to half of the important new drugs sold in major markets around the world were introduced by U.S. pharmaceutical companies. And here at home the drug industry is making nine out of every ten new drug discoveries. Breakthrough medicines that are going to be created for AIDS, heart disease, Alzheimer's, stroke, cancer, or any other disease will come from the American drug companies.

But according to the Senator from Washington, they cannot bring out products. Come on. They have tried every trick in the book.

What we really have afoot, Mr. President, when they cite the Constitution is just that—an assault against the constitutional right of trial by jury guaranteed by the seventh amendment. People who say they do not trust politicians anymore are waiting for the politicians to behave as though they trust the people. You and I trust them to elect us, but when they get us 12 men and women on a jury sworn to listen to the facts and make their finding, according to their sworn oath, "They do not know what they are doing; they have gone ape; they are just runaway juries," and everything else of that kind.

But we up here, the bureaucracy in Washington, we should decide rather than letting the juries decide back home.

We have a right, Mr. President, that has worked over the many, many years. You have safe drug products. Thank heavens, we have product liability and we have taken off Dalkon shield and all the rest of these other things—cancer causing products. We have safer automobiles.

Why do you think Chrysler the other day said they were going to recall I think some 350,000 or several million cars? I had the summation. Seventy-one million automobiles in the last 10 years, American and foreign manufacture, have been recalled. They do not recall them because of the goodness of their heart. They recall them on account of product liability. What we have in hand here they want to destroy. We have always had in this land "salus populi suprema lex." Safety of the people is the supreme law.

Now they come with this measure, the profits of the manufacturers is the supreme law, and whine that they are for the consumers and they cannot put out products.

How does this come about? I have been in this for 40 years and I have watched it develop: Pollster politics. They tell you when you come to this national office up here that you have to get a poll and get to four or five hot-button items and then you have to identify with them. You are for jobs, everybody is for jobs; you are against crime; you are against taxes. They just go down the list.

Then they tell you, and in fact GOPAC puts on a school over there for the young Congressmen that are elected, they say, "You have only got a 20-second time bite to give your message, so you need words that count, words that excite, inflame."

And do you know what they call us up here now? I quote the Speaker. He terms the U.S. Government that pledged to preserve, protect, and defend, he calls it the corrupt liberal welfare State.

And when you can come in this anti-Government drive with the Contract With America and you see it in the morning paper and if you read it closely, it is gone: "Get rid of the Government. The Government is not the solution, the Government is the problem. The Government is the enemy."

That has been the drumbeat. If you can wrap it together in tort reform, you can get against the lawyers and against the Government both and you can really have a winner.

Well, for 15 years we have defended against this assault. President Ford helped us 15 years ago. He appointed a commission. And when President Ford appointed that commission, they had a 4-year study that came out and found that the States for 200 years have been handling this properly, basic tort law.

Incidentally, of all the civil findings, only 9 percent are tort. And of all the tort, only 4 percent of the 9 percent, or 0.38, thirty-eight one-hundredths of 1 percent of what we are supposed to be dealing with. It is not a problem at all.

They said the States were handling it. And now we know by record in the hearing that the States have reformed, they have acted. The legislators are not asleep, the Governors are not asleep, the attorneys general are not asleep back in the States. They can handle this problem. That is the plea of the contract in reality. Get all of these things, housing grants, block grants to the States, welfare block grants, whatever it is. Give it back to the States.

Not on this one. You are in the hands of the Philistines, that manufacturing crowd out there—the Conference Board, the NFIB, the Chamber of Commerce.

I have been elected six times and they do not come running.

That crowd that we have, they come running. Yes, the Chamber wants to know where you stand, the NFIB, the Conference Board, everything else. They talk about trial lawyers giving you money. They give money but the others, the manufacturing and insurance crowd, they give more money and they have the votes.

And the people who really oppose this bill do not have a PAC. Have you ever seen a PAC for the American Bar Association? Have you ever seen a PAC for the Consumer Association, Public Citizen, Association for State Supreme Court Justices, Association of State Legislators, law school deans—they have all appeared in the polls—the State attorneys general? They do not have PAC's.

But there they come with all this. And we have been working with them, but we have the contract now. And we have had many of these Senators that finally changed their votes who said, "You know, I got in trouble. I committed a year ago."

That is how it happens, if people want to know. When all the powerful organizations come to you in a campaign and you are for reform—"Yeah, I'm for reform. I'm for reform." They have been reminded in the last several days in this debate here how they gave their commitment.

So I went to them, I said, "How do you change your vote?" They said, "Well, I got in trouble a year ago or 2 years ago when I was running." And that explains it. But it does not change the lack of merit in this particular initiative and the danger of it all.

So what we have is "Kill all the lawyers." You could see it in the amendments. That is what they have.

Our friend Dan Quayle started that before the American Bar Association some 4 years ago and we still have it going. If you can vote against the lawyers and say they are running away and getting all the money and everything else like that, you have mob action on foot and you can get it moving.

Well, Mr. President, it is bad law. What happens is they do not give you a Federal cause of action. If they had come in—and I have been insisting for the 15-year period, if you want to make a finding under the interstate commerce clause that they plea, that we are going to make a congressional finding that there is a national problem and give a Federal cause of action, that is one thing. No, that is not what they want. They say they are trying to get simplicity, eliminate complexity, get uniformity. But then they put guidelines down for the 50 States to interpret and then can go into the Federal court and, by the way, exempt the manufacturer. Any of these things that I have talked of, any of these initiatives, any of these amendments, just exempt the crowd that wrote the bill.

Now I can tell you here and now if that is not hypocrisy, I do not know what the heck is. And yet they are saying they are proud now and they want to thank everybody, tell them about their balance and everything else like that.

This is one of the most dangerous initiatives. It has been held up for 15 years by all of these organizations. It is a nonproblem. They know it. It is a solution looking for a problem, in all reality.

And we are headed, yes, with the English rule, we are headed with two levels of society. "Get rid of the jurors and people with common sense back home. We know it all up here."

They started over 130 years ago diminishing that guaranteed right of trial by jury. So today, less than 2 percent of civil cases go to a jury trial in England. And you are told that the issues are too complex, you do not have sense enough to understand and what have you. And that is the initiative that starts today on the floor of the U.S. Senate.

They know in their hearts it is bad law. They have tried everything from the Girl Scouts, and had to withdraw that; they tried the Little League and had to withdraw that. They put George McGovern on TV and had to pull him off. They tried everything—the McDonald's case, then when that was explained to them, you do not hear them talk about the McDonald's case. Always these little anecdotal things that they bring up.

But they got one winner: "Let's get rid of the lawyers." We can get a majority vote on that. We can get a majority vote on that. And so it is.

In essence, what you are really doing is getting rid of the jurors. The trial by jury, they are eroding it, nibbling at it bit by bit is the intent and purpose, just like they had in England where you do not even get a review of facts or anything else. You cannot even ask the

jurors any questions; you cannot find the background.

I could go down the list, but my time is now limited and I am practically out of time.

I simply say that it is a sad day in the history of government because it brings to culmination the so-called contract of reform which goes totally in contradiction to the entire theme of the contract back home. The people know—you are going to hear it now in the budget. The people back home need a tax cut because they know how to spend the money better than the Government up here. All of these pleas and everything. The people back home know this, they know that, they know everything except the facts of the case that they are sworn to uphold.

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

Mr. HOLLINGS. I yield the floor.

Mr. GORTON. Mr. President, again, for the information of Members, we will now have the vote on my motion to table the Dorgan amendment.

There are then two other amendments, all amounting to the same thing, that will come before final passage. I hope that those two amendments will be adopted by voice vote. I will then ask for a rollcall on final passage of the bill.

The PRESIDING OFFICER. Under the previous order, the question occurs on agreeing to the motion to table amendment No. 629 offered by the Senator from North Dakota [Mr. DORGAN]. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote "yea."

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

The result was announced—yeas 54, nays 44, as follows:

[Rollcall Vote No. 160 Leg.]

YEAS—54

Abraham	Frist	Lugar
Ashcroft	Glenn	Mack
Bennett	Gorton	McCain
Bond	Gramm	McConnell
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Robb
Coverdell	Hutchison	Rockefeller
Craig	Inhofe	Santorum
DeWine	Jeffords	Smith
Dodd	Johnston	Snowe
Dole	Kassebaum	Stevens
Domenici	Kempthorne	Thomas
Exon	Kyl	Thompson
Faircloth	Lott	Thurmond

NAYS—44

Akaka	Feingold	Mikulski
Baucus	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Packwood
Bradley	Heflin	Pryor
Breaux	Hollings	Reid
Bryan	Inouye	Roth
Bumpers	Kennedy	Sarbanes
Byrd	Kerrey	Shelby
Cohen	Kerry	Simon
Conrad	Kohl	Simpson
D'Amato	Lautenberg	Specter
Daschle	Leahy	Wellstone
Dorgan	Levin	

NOT VOTING—2

Lieberman	Warner

So the motion to lay on the table the amendment (No. 629) was agreed to.

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

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

The motion to lay on the table was agreed to.

TOXIC HARM

Ms. MIKULSKI. Are asbestos-related injuries and deaths covered by the toxic harm exception to the statute of repose in S. 565?

Mr. ROCKEFELLER. Yes, asbestos-related injuries and deaths are covered by the toxic harm exception to the statute of repose.

AMENDMENT NO. 790

Mr. HATCH. Mr. President, I wish to discuss language in the Gorton-Rockefeller-Dole substitute amendment concerning punitive damages. The substitute language includes a formula for calculating the amount of punitive damages allowed to be awarded to a claimant against a defendant. This formula originated with Senator SNOWE and was added to the Dole-Exon-Hatch amendment last week, with my support. It remains part of the underlying substitute amendment. The formula to which I refer provides generally that the amount awarded to the claimant for punitive damages in a products liability action shall not exceed the greater of two times the sum of the amount awarded for economic loss and noneconomic loss, or $250,000. In the case of a small business, a special rule provides that the amount of punitive damages shall not exceed the lesser of two times the sum of the amount awarded to the claimant for economic loss and noneconomic loss, or $250,000.

It is my understanding that the formula for calculating the amount of punitive damages is intended to take into account the separate provision in the bill that makes a defendant only severally liable for noneconomic losses. Thus, when doubling the amount of noneconomic losses in computing the upper limit of punitive damages which may be awarded against a defendant, it is appropriate only to consider the share of noneconomic loss attributable to that defendant. It would be unfair and inconsistent with other provisions in this act to expand the base multiplier in the punitive damages section of this bill to include noneconomic losses not attributable to a defendant.

Mr. HELMS. Mr. President, the pending Product Liability Fairness Act, even though it has been watered down considerably by our Democrat colleagues, is nonetheless needed to remedy the morass of product liability laws plaguing our judicial system today. We have a duty to ensure that Americans are fairly compensated when they are injured by faulty products. But today's legal system has been maneuvered into a position of encouraging many people to file frivolous suits demanding unreasonably high damage awards.

I am extremely disappointed that the medical malpractice provisions, approved by the Senate on May 2, were deleted because of threats by the Democrats that they would block passage of the entire bill.

Americans are suing each other too often, for too much money and for too little reason. Last year, more than 70,000 product liability lawsuits clogged U.S. courts. And by 1992, lawyer fees accounted for 61 percent of the total amount spent on product liability claims.

In so many cases, those who are injured least tend to receive the largest settlements, while many of the most severely injured spend years in the legal system, sometimes never receiving the compensation they deserve.

Mr. President, the pending legislation will be a first step toward remedying these problems with the current system by:

First, giving manufacturers and consumers certainty as to the rules of the game when it comes to product liability lawsuits;

Second, allowing consumers with valid claims to receive fair awards, and receive these awards faster;

Third, reducing costs of litigation and insurance premiums, which in turn, will lead to lower prices for consumer products;

Fourth, giving consumers with valid claims more time to file complaints against negligent manufacturers; and

Fifth, eliminating unwarranted lawsuits which threaten to bankrupt small businesses—the segment of our economy that provides most of the jobs in this country.

Mr. President, rather than expound on the problems with the current system, I will share with my colleagues a letter from the plant manager of Butler Manufacturing, a small business in Laurinburg, NC. His letter is similar to many I have received from 99 other small businessmen from my State. It reads:

DEAR SENATOR HELMS: As you know, Butler Manufacturing has a plant in Laurinburg, North Carolina which employs two hundred workers. We urge your support of S. 565, the Product Liability Fairness Act, which offers

some of the reforms needed in the product liability area.

Our company spends hundreds of thousands of dollars each year for product liability insurance and legal fees and our employees devote hundreds of hours of their time to help our attorneys defend unwarranted product liability claims.

Many times we settle a claim which we honestly believe has little merit because it is less expensive to settle than to litigate or to expose the Company's assets to punitive damages.

Our Company competes in the international market place. To be competitive we cannot bear the cost of product liability insurance, huge punitive damage expense, and large costs to defend unwarranted claims which our competitors do not bear.

We believe persons injured by faulty products through no fault of their own ought to be compensated for their out-of-pocket losses. However, current court-made rules allow much greater compensation than is justified and also make it difficult for companies to properly defend themselves.

Mr. President, this explains why small businesses—not the Fortune 500 companies—are the ones most threatened if nothing is done to reform the current legal system.

According to the National Federation of Independent Businesses, the cost and availability of liability insurance rank No. 5 out of a list of 75 problems facing small businesses today. They are constantly in danger of being pulled into unwarranted lawsuits, where the fear of punitive damages forces them to settle in cases in which they should never have been involved.

About half of all small business owners earn about $50,000 a year. However, a Rand Institute study shows that it costs the same small businessman an average of $100,000 to defend against a lawsuit—regardless of the suit's merit. Thus, defending even a single unwarranted lawsuit costs twice as much as the average small business owner earns in a year.

Perhaps the most critical problem for small businesses is something lawyers know as joint and several liability, which permits plaintiffs to recover the full amount of damages from any one of the defendants—regardless of the amount of fault of the individual defendant. So, even if a small businessman is responsible for only 10 percent of the damage caused the plaintiff, under the current system, that businessman can still be held liable for 100 percent of the damages. The pending bill fixes this problem by holding a defendant liable for the percentage of noneconomic damages for which he or she is responsible.

Mr. President, I have many friends who are trial lawyers. They have made some compelling arguments in favor of the current system; however, in this matter, we have had to agree to disagree.

For example, trial lawyers argue that: First, limits on punitive damage awards are unnecessary because courts don't frequently award punitive damages; and Second, when they are awarded, punitive damages generally do not amount to very large sums.

As every first year law student knows—or should know—there are three kinds of damages awarded in civil lawsuits.

The first—economic damages—reimburses an injured person for lost wages, medical care, and out-of-pocket costs incurred as a result of the injury.

Second—noneconomic damages—are awarded for things such as pain and suffering, and

Finally, there are punitive damages. The purpose of punitive damages is not to compensate the injured person, but rather to punish the defendant for his or her negligent behavior. Most of the disagreement in the pending bill surrounds punitive damages.

Mr. President, are punitive damages rarely awarded as trial lawyers claim? No. Injured parties routinely request punitive damages in product liability and other tort claims. They do so because they know that's where the big bucks are. Not only are punitive damages routinely requested, the amount of punitive damages awarded is increasing. In Cook County, IL, the average punitive damage award was $6.7 million. In 1984, the average punitive award in San Francisco was $743,000.

In North Carolina punitive damages have been awarded only once. Despite this fact, any time a product manufactured in North Carolina ends up in another State, the North Carolina manufacturer can still be hauled into an out-of-State court and sued for outrageous punitive damage amounts.

Mr. President, trial lawyers also assert that product liability reforms are unnecessary because so very few lawsuits filed today are product liability cases. They claim that contract disputes and domestic relations cases make up more of the current case load in today's courts.

That product liability cases make up a small piece of all tort cases ignores one important and critical point: It only takes one product liability lawsuit to bankrupt a small manufacturing firm. Even if the manufacturer is not found negligent, it still costs that small business a small fortune to defend the lawsuit.

Lastly, lawyers argue that product liability reform will not lower liability insurance premiums that manufacturers pay. I disagree. Over the past 40 years, liability insurance costs have increased 4 times the rate of growth of the national economy.

Moreover, for every extra dollar a company pays in product liability insurance, that's a dollar less in an employee's pocket, or a dollar less used to develop new products.

In closing, let me return to the letter from the plant manager in Laurinburg, NC. This is a small business pleading for fairness and for an opportunity to compete fairly for business. If this plant, and the other 99 small businesses who've written me, are to prosper, they cannot afford to defend unwarranted claims every time they turn around.

We cannot continue to tie the hands of small businesses by forcing them to defend case after case in a legal system that is unfair, inconsistent, and unpredictable. The pending bill does nothing to impede an injured person's right to recover reasonable damages for his or her injuries. Nor does the bill favor any particular industry. It simply weeds out frivolous and unwise lawsuits, making it easier and for injured individuals to obtain the recovery they deserve.

PRODUCT LIABILITY—STATES' RIGHTS AND ONE-WAY PREEMPTION

Mr. FEINGOLD. Mr. President, I rise to briefly discuss one of the more interesting—and most distressing—components of S. 565, the so-called Product Liability Fairness Act. That, Mr. President, is the conscious and flagrant expropriation of the rights of the State and local governments to fashion their own civil justice systems.

Over and over in the early months of the 104th Congress we have heard the distinguished majority leader announce his intent to "dust off the 10th amendment". That amendment, part of the Bill of Rights and sometimes thought of as the forgotten child of the Bill of Rights, states that:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Well, here is a power that has been reserved by the States for over 200 years. And I cannot help but note the hypocrisy present here. We have heard the thunderous voices of States rights advocates, railing against Washington bureaucrats and proclaiming that this new Congress is committed to the proposition of shifting control of policies from Washington back to the States.

But then many of the same advocates of States rights also support legislation such as this that is designed to seize control over a policy area that has been the domain of the States since our Nation's founding and turn it over to 535 Members of the Congress.

Make no mistake about it: Under this legislation, we are going to tell the States—even in instances where there is no Federal jurisdiction over a tort case—the parameters within which they are to conduct their judicial proceedings.

That means that if a consumer in Sheboygan sues a manufacturer in Green Bay, they will have to litigate under Federal standards, such as a Federal cap on punitive damages, even though this is a completely intrastate judicial question.

There is also a provision that states that a decision of a U.S. circuit court of appeals interpreting the provisions

of this legislation shall be controlling precedent to be followed by each and every Federal and State court within that circuit unless overruled or modified by the Supreme Court.

This provision was denounced by Stanley Feldman, chief justice of the Arizona State Supreme Court in his testimony to the Senate Commerce Committee on April 3 on behalf of the conference of chief justices. Chief Justice Feldman said that:

. . . This provision will be the first time in the history of America that any Federal court has been given the authority to decide a question of State law, a subject which raises the chills on the back of every member of the conference of chief justices.

What happened to the commitment of those on the other side of the aisle to return power back to the State governments? What happened to all of those criticisms we heard of health care reform and other initiatives last year where the other side derided the one-size-fits-all approach to solving problems?

When I made my opening statements on this bill I mentioned a statement made by the Speaker of the House in his address to the Nation on April 7 about the intent of the congressional Republicans in the 104th Congress. The Speaker stated that:

We must restore freedom by ending bureaucratic micromanagement here in Washington . . . This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters; we've got to return power back to you—to your families, your neighborhoods, your local and State governments.

Mr. President, I don't say this very often, but when the Speaker of the House says: "This country is too big and too diverse for Washington to have the knowledge to make the right decision on local matters," I tend to agree with him.

That is precisely why I opposed last year's crime bill. Enforcement of our criminal laws is best left in the hands of our local police and sheriffs' departments, because what works and is needed in the inner city of Milwaukee is not necessarily what works and is needed in the rural confines of Rusk County. It is problematic enough for a Senator from Wisconsin to understand these regional distinctions, but to suggest that 524 Members of Congress from 49 other States will know how to address the idiosyncrasies of fighting crime in Onalaska, WI, seems a bit far-fetched to me.

This same principle holds true for our tort systems. Maybe one of our rural farming States has purposely fashioned their legal system so as to protect farmers from defective machinery that is commonplace in that State. Maybe another State that attracts large numbers of retired persons has used the availability of punitive damages to deter certain products from being sold that are unsafe and would disproportionately affect the elderly.

The other side talks a good game when it is expressed over and over again that State legislatures and governments are best equipped to solve problems that are local in nature. But whether it is crime legislation, or civil justice reform, or even term limits, there is a clear assumption that local or private decisions are best made by those in Washington, DC.

I served in the Wisconsin State Senate for over 10 years and I know how the various State legislatures around the country would react to this bill. In fact, the national conference of State legislatures strongly opposes the Product Liability Fairness Act. In a letter sent to all Members of this body, the conference states:

State civil justice systems are expressions of local values and needs, as the Founders intended when they established our system of Constitutional federalism. National product liability standards put at risk this fundamental expression of self-government and federalism.

Moreover, the confusion resulting from superimposing a one-size-fits-all Federal standard for product liability over existing State tort law presents a risk to the efficient administration of justice in State courts.

Mr. President, I think it is abundantly clear that the notion of States' rights is about to go right out the window as we usurp over 200 years of State control over their tort systems. Another organization comprised of those who are involved in local judicial systems is the conference of State chief justices. Let me quote from a statement submitted by the chief justices expressing their opposition to Federal product liability legislation. They say;

The negative consequences of S. 565 for federalism are incalculable. With the proposed legislation reaching so far into substantive civil law, States will be forced to provide the judicial structure, but will not be permitted to decide the social and economic questions in the law that their courts administer. Enactment of S. 565 would alter, in one stroke, the fundamental principles of federalism inherent in this country's tort law. . . .

S. 565 is a radical departure from our current legal regime and is neither justified by experience nor wise as a matter of policy.

So I think it is clear what a dramatic and radical arrogation of power this legislation represents. But even if you accept this notion that we should have Federal standards with regard to product liability actions—and I don't—but even if you do believe such standards are necessary, this legislation is light-years away from bringing any sense of uniformity to our civil justice system.

The supporters of this legislation have made it clear that they believe Federal uniform standards for our product liability laws are warranted, presumably to address the supposed uncertainty and unpredictability of our legal system.

Those of us on the other side disagree. We believe the system was designed to protect innocent consumers who have been injured by defective products, and more importantly, we are reluctant to usurp the authority of the States over an area that for 200 years has been the domain of the State legislatures.

As I stated earlier, many of us are also bewildered as to why some would make changes to the legal system that are opposed by the National Conference of State Legislatures, the Conference of Chief Justices, the American Bar Association and law professors throughout the country.

But I think it is important to point out the great fallacy in the notion that this bill provides uniform Federal standards. It clearly does not. What it does provide, is a line in the sand. This bill says that State laws and State reforms that are designed to protect consumers, children, working people, and the elderly are no longer applicable.

It says that those States do not know how to protect consumers—we here in Washington, DC know best how to do that. If you are on that side of the line in the sand, well sorry but you are out of luck because apparently it is the Congress that knows best how to protect farmers in Iowa, factory workers in Michigan, and children in California.

But if you are on the other side of that line, if there are State laws or State reforms that are designed to protect the interests of the business and manufacturing communities, well those are OK. This bill says that those State legislatures know exactly what they are doing and we should not preempt any of their efforts.

These are uniform Federal standards? Let me raise a couple of examples to illustrate just how unfair and unbalanced the bill is in this regard. The punitive damage cap is an obvious example. The underlying bill calls for a cap on punitive damages equal to the greater of two times compensatory damages of $250,000. In addition, under certain circumstances a judge may award supplementary punitive damages above the amount the jury has rewarded.

I think the layperson would look at this provision and assume that this cap—a Federal cap of $250,000 or two times compensatory damages—would apply across the board. In other words, whether you were injured by a defective product in Wisconsin, New York, or Mississippi and filed suit in any of those State courts, a jury would be able to award punitive damages of up to $250,000 or two times compensatory damages.

Unfortunately, especially for those who support uniformity, that is not what this legislation would do. Under the now-amended bill, the punitive damage cap would not preempt, supersede, or alter any State law to the extent that such law would further limit the availability or amount of punitive damages. Those State laws would not be preempted.

In other words, if a State allowed unlimited punitive damages, or even had a cap but that cap was higher than this new Federal cap, that State law would be preempted by this legislation.

But if a State prohibited punitive damage awards, or had a cap lower than the cap in the underlying bill, that State law is hailed as responsible and fair and allowed to continue under this legislation.

I wonder if any of my colleagues are familiar with the "Slip 'n Slide" case we had in Wisconsin just a few short years ago. The Slip 'n Slide is a sort of water slide that is spread out over the ground. You are supposed to get a good running start, jump head first on the wet plastic and then slide along the rest of the wet plastic. It was a product that was manufactured for families and obviously, targeted especially for children.

The plaintiff in this case, a 35-year-old father of two, dove onto this water slide, struck his chin on the ground and broke his neck. He was rendered an incomplete quadriplegic. The plaintiff was unable to return to his $12,000 a year job and had no means to pay the $46,000 in medical bills he was saddled with.

During the trial, the plaintiff alleged that the product was unreasonably dangerous for its intended purpose. This was compounded by the fact that the water slide's warnings were inadequate because they were not prominently displayed among the product's list of instructions and warnings.

Testimony was presented showing that other users had experienced similar injuries and one individual had even died from such an accident. It was also made clear that the manufacturer continued to market the product even after it was made aware that numerous neck injuries such as this were occurring.

Let me say that again; the facts showed that the manufacturer knew the product was causing neck injuries and yet still continued to market the product.

The jury in this case, in a Wisconsin State court, found that the manufacturer was 100 percent at fault and awarded over $12 million to the plaintiff, including $10 million in punitive damages. This judgment was later reduced so that the plaintiff and his family in the end received about $5 million.

We know what the other side's response to this is; "$10 million? That jury must be out of control."

Some of us, however, have faith in the ability of the American people to serve on juries and administer justice in a fair and equitable manner.

You can bet, Mr. President, that the manufacturer of the Slip 'n Slide is thrilled about this legislation. Those on the other side want to insulate such companies from juries and the threat of extensive punitive damages. Why? Because such a large punitive damage award might force the manufacturer to take a product off the market that has been considerably profitable for that manufacturer.

But I would contend, Mr. President, that our civil justice system is designed to do just that—to sanction parties that knowingly market a defective product and to protect the consumers that are victimized by these products.

That Wisconsin jury awarded a large punitive damage award for two reasons: One, to get a dangerous product off the market that is often used by young children and that was causing numerous neck injuries and paralysis; and second, to punish the manufacturer for continuing to market the product with knowledge of its very serious defects and to deter other manufacturers from engaging in similar conduct.

I would say that in this case, the jury—in a State court—knew exactly what it was doing and justice was served.

Mr. President, the Wisconsin jury in this case awarded $10 million in punitive damages in the slip 'n slide case. I have no doubt that most of the proponents of this bill believe that this is a classic case of a jury run amok.

Here is what I find interesting though. That jury found the manufacturer in this case 100 percent at fault. Suppose this was a criminal defendant on trial for assault with a deadly weapon. After all, the manufacturer in this case was marketing a product that they knew was causing neck injuries and paralysis.

The fact is, if this had been a criminal defendant I have no doubt that there would have been a bidding war on the other side to see who could propose the stiffest criminal sentence for this defendant.

We can only speculate about what the fate of the Slip 'n Slide would have been had this accident and litigation occurred in a State that currently prohibits punitive damage awards. Most likely, more neck injuries and maybe some fatalities would have occurred until a suit had been filed in a court where punitive damages were permitted.

Had the underlying bill been in effect 4 years ago, that Wisconsin jury would have had to award an amount consistent with the arbitrary cap. One can only wonder if the manufacturer would have pulled this dangerous product because of a $250,000 slap on the wrist.

Let me say this one more time: The jury in this case—a State jury—found the manufacturer to be 100 percent at fault. The jury found that the manufacturer continued to market the product—a product targeted mostly at children—even after the manufacturer discovered that the product was causing numerous neck injuries and paralysis.

The jury elected to award substantial punitive damages to punish the manufacturer for this reprehensible behavior and to deter other manufacturers from engaging in similar conduct.

I say to my colleagues that this is exactly what our civil justice system, grounded in the principle of trial by jury, was designed to do and I am confounded as to why the supporters of this bill are unwilling to trust those Americans that meet their civil duties by serving on juries.

How troubling that at a time when Americans are so distrustful of their Government that we in Government are not willing to trust Americans to administer civil justice.

Mr. President, I am somewhat mystified as to how supporters of this bill can suggest that this bill is proconsumer when they want to place this kind of a straightjacket on juries. In addition, I find it absolutely ludicrous that the supporters of this bill would suggest that we are providing uniformity when we are going to have completely different punitive damage standards throughout the 50 States.

Let me provide another example of how this bill would pre-empt State laws to the extent that those laws are proconsumer.

S. 565 creates a new Federal standard for the number of years a manufacturer or product seller can be held liable for a harm caused by a particular product. Known as a statute of repose, that period is 20 years under this bill. Why 20 years? Good question.

The product liability legislation considered in the last Congress, written by the same two principal authors, contained a 25-year statute of repose—5 years longer. Why? Well a footnote in the committee report from last year justified 25 years by pointing out that according to testimony received by the Commerce Committee, and I quote,

> Thirty percent of the lawsuits brought against machine tool manufacturers involve machines that over 25 years old.

Therefore, presumably, the authors of this bill selected 25 years as the life expectancy of all products manufactured in the United States.

But now we have a new bill that the supporters have tried to characterize as much more moderate and much narrower than either the House-passed legal reform legislation or the product liability bill considered by the Senate just last year. But remarkably, the 25-year statute of repose has been dropped to 20 years.

Why? Once again, good question. This year's committee report conspicuously leave out that footnote about the machine tool testimony, and makes absolutely no mention whatsoever as to why 20 years was selected.

Instead, the committee report promotes the consistency of this statute of repose with the General Aircraft Revitalization Act of 1994, passed by this body last year. Mr. President, I voted for that legislation. But that legislation provided an 18 year statute of

repose for a very narrow segment of our manufacturing base.

This body came to the conclusion, the overwhelming conclusion as I recall that vote, that 18 years was a reasonable length of time for liability claims associated with the general aviation aircraft.

This statute of repose, however, is entirely different. His 20-year period would apply to all durable products across the board with a few limited exceptions. Machine tools, farm equipment, football helmets—you name it. This Congress is going to decide that the life expectancy of virtually every product in America is 20 years.

But this takes us back to the issue of selective preemption of State authority over liability laws. Section 108(B)(2) reads;

> . . . If pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

In other words, if a state legislature has decided against having a statute of repose, or has decided on a statute that is longer than 20 years, this new Federal law will override the judgment of that State legislature. Again, so much for uniform Federal standards.

Ironically, this year's committee report also justifies a Federal statute of repose on the basis that Japan is poised to enact a short 10-year statute of repose. So now apparently the Japanese Government knows better than the State of Wisconsin how to properly administer civil justice in cases involving Wisconsin litigants. I wonder how the Framers of the Constitution would feel about that assertion.

Before I conclude my remarks, Mr. President, I would like to remind my colleagues of the giant precedent we are about to set, or the radical departure from our current system as the Chief Justices put it. This legislation would make dramatic alterations to some of the oldest and most fundamental underlying principles of our judicial system.

Product liability is just a first step—the majority has made their intention clear to pursue legislation that would overhaul our entire civil justice system.

As we make these sort of tremendously consequential decisions, there are a variety of groups and individuals we can seek advice from. Those of us that oppose this legislation have chosen to listen to the experts on this issue—whether it is Chief Justices, the American Bar Association or the National Conference of State Legislatures.

But those who support this legislation do not want to listen to State legislators, judges or even the consumer organizations that this bill purports to protect. Instead, the other side has chosen to listen to the advice of corporate America on how to best to shield those who manufacture and sell defective products from any sort of liability. That is unfortunate for all of us.

Thank you, Mr. President, and I yield the floor.

Mr. DOMENICI. Mr. President, I am pleased to support the efforts of my colleagues today to reform our system of products liability litigation. The Senator from Washington [Mr. GORTON], the Senator from Utah [Mr. HATCH], and the Senator from West Virginia [Mr. ROCKEFELLER] deserve a lot of credit for putting together a bipartisan approach to solving the problems associated with products liability.

I have watched this debate over the past 2 weeks with great interest. I was pleased to see that there was some interest in expanding this bill in order to achieve general across-the-board legal reform, and I supported many of the thoughtful amendments which were brought to the floor. I would have preferred to include the rule 11 amendment offered by the distinguished Senator From Colorado [Mr. BROWN] and the amendment on joint and several liability offered by the distinguished Senator from Michigan [Mr. ABRAHAM] in any bill we might eventually pass. But I realize that in the interest of compromise, changes had to be made in order to get something passed, and unfortunately that compromise will not include comprehensive legal reform.

I am no stranger to legal reform. I have been trying to fix our broken securities class action system for several years, and many of the problems associated with securities litigation are inherent to our general tort system. I also have introduced legislation in past years to fix some of the problems associated with medical malpractice.

I am disappointed that we will not address medical malpractice litigation reform in this bill. The distinguished Senator from Kentucky [Mr. MCCONNELL] and the chairperson of the Labor Committee, the gentlewoman from Kansas [Mrs. KASSEBAUM], did a fine job putting together a comprehensive and fair overhaul of our medical malpractice system. There were several provisions in the medical malpractice amendment which I included in my health care reform bill last Congress, and I believe that the amendment would have gone a long way toward reducing health care costs for all American citizens. For that reason, I hope that we will take up medical malpractice reform later on in this Congress.

Particularly, I would like to address collateral source reform, which would prevent duplicative payments by insurance companies for the same injuries. I heard just last week from an individual who works for a company that sells insurance in my home State of New Mexico. He told me about a case that he just handled where a claimant was paid five different ways for the same injury. He told me that four ways was common, but that this was his first five-way case. He told me that if we want to achieve significant reform, preventing this sort of duplicative payment and the litigation that goes along with it will substantially strengthen our system. I hope we will continue to pursue collateral source reform later this year.

I also had hoped that we would be able to include general rule 11 reform in this bill and the Senator from Colorado, Senator BROWN, should be commended for bringing his important amendment to the floor. Prior to 1993, courts were required to sanction attorneys who filed a frivolous complaint, and rule 11 served as a healthy deterrent to strike suits. However, rule 11 was weakened in 1993 and judges were given the discretion to impose sanctions even when they found that a complaint truly was frivolous. Senator BROWN's amendment would return us to the pre-1993 standard and adopt a preference for the sanction to be payment of the attorneys fees and costs of the opposing party.

It also would limit fishing expedition lawsuits by requiring attorneys to make an adequate inquiry into the facts prior to the filing of a complaint. Attorneys should be required to stop, think and investigate the facts before filing lawsuits which could have a potentially devastating effect, and Senator BROWN's amendment would have done just that. I believe that this issue also should be re-visited later in the year.

As for products liability, there can be no doubt that the current system in place in this country extracts tremendous costs from the business community and from consumers. The great expense associated with products liability lawsuits drives up the cost of producing and selling goods, and these costs are passed on to the American consumer. We have heard several Senators talk about how half of the cost of a $200 football helmet is associated with products liability litigation, and how $8 out of the cost of a $12 vaccine goes to products liability costs. We can no longer afford to require our consumers to pay this tort tax.

Because of the high costs associated with products liability litigation, American companies often find it difficult to obtain liability insurance. The insurance industry has estimated that the current cost to business and consumers of the U.S. tort system is over $100 billion. Insurance costs in the United States are 15 to 20 times greater than those of our competitors in Europe and Japan. Much of this money ends up in the pockets of lawyers, who exploit the system and reap huge fee

awards while plaintiffs go undercompensated and our businesses suffer.

For companies involved in the manufacture of certain products, like machine tools, medical devices, and vaccines, this means that beneficial products go undeveloped, or after they are developed, they do not make it to the marketplace out of fear of being sued. This hampers our competitiveness abroad, and limits the products available to consumers. Harvard Business School Prof. Michael Porter has written about how products liability affects American competitiveness. He wrote:

> In the United States * * * product liability is so extreme and uncertain as to retard innovation. The legal and regulatory climate places firms in constant jeopardy of costly, and, as importantly, lengthy product liability suits. The existing approach goes beyond any reasonable need to protect consumers, as other nations have demonstrated through more pragmatic approaches.

In the case of manufacturers of vaccines and other medical devices, the cost of our unreasonable and certainly unpragmatic products liability litigation system often means that potentially life-saving innovations never make it to the American public. Products liability adds $3,000 to the cost of a pacemaker, and $170 to the cost of a motorized wheelchair. It also has caused the DuPont Co. to cease manufacturing the polyester yarn used in heart surgery out of fears of products liability litigation. Five cents worth of yarn cost them $5 million to defend a case, and DuPont decided that they simply could not afford further litigation costs. Now, foreign companies manufacture the yarn and will not sell it in the United States out of fear of also being sued.

In cases where a truly defective product has injured an individual, the litigation process is too slow, too costly, and too unpredictable. This bill, because it creates a Federal system of products liability law, will return some certainty to a system that now often undercompensates those really injured by defective products and overcompensates those with frivolous claims.

Those injured by defective products often must wait 4 to 5 years to receive compensation. This leads victims to settle more quickly in order to receive relief within a reasonable time. Companies must expend huge amounts of money in legal fees to settle or litigate these long, complicated cases. These again are resources that could be better spent developing new products or improving the designs of existing ones.

Another major problem with our tort system is with punitive damages. As their name implies, punitive damages are designed to punish companies and deter future wrongful conduct. They are assessed in these cases in addition to the actual damages suffered by injured victims.

Unfortunately, these damages have little effect except to line the pockets of lawyers. They serve relatively little deterent purpose and led former Supreme Court Justice Lewis Powell to describe them as inviting "punishment so arbitrary as to be virtually random." Because juries can impose virtually limitless punitive damages, in Justice Powell's words, they act as "legislator and judge, without the training, experience, or guidance of either." Justice Powell is absolutely correct, and I applaud the drafters of this bill for dealing with the problems associated with these types of damages.

Reform of punitive damages will return some common sense to the system. Under the current system, punitive damages do little to deter wrongful conduct and merely serve to line the pockets of contingency fee lawyers. Huge punitive damage awards also threaten to wipe out small businesses and charitable organizations. By limiting the amount of punitive damages available in these cases and raising the legal threshold for an award of punitive damages, this bill will relieve some of the pressure on even the most innocent defendant to settle or face an award which could potentially bankrupt the company. It also will provide some uniformity and certainty in States which still allow punitives. Finally, for those States which do not allow punitive damages, I think the bill makes it clear that they may continue to do so.

The drafters of this bill also have taken the wise step to reform joint liability, without limiting the ability of plaintiffs to recover their economic damages. The bill abolishes joint liability for noneconomic damages, like pain and suffering, but allows States to retain it for economic damages like hospital bills. This will reduce the pressure on defendants who are only nominally responsible for the injury to settle the case or risk huge liability out of proportion to their degree of fault, while ensuring that injured victims get compensated for their out-of-pocket loss.

I would have liked to see this extended across the board to all civil cases and I voted for the Abraham amendment, but at least in the area of products liability, this provision strikes a fair balance between the rights of injured plaintiffs and those of those defendants brought into cases merely because of their deep pocket.

The bill also limits liability in cases where the victim altered or misused the allegedly defective product in an unforeseeable way. It simply is unfair to hold manufacturers liable in cases where consumers use products in ways for which they were not intended. It also is unfair to hold defendants liable in cases where the plaintiff's use of alcohol or drugs significantly contributed to their injury. I am happy to see that this bill provides an absolute defense in such cases.

Mr. President, as I said earlier, I am no stranger to legal reform. Many of those who are responsible for this important and well-crafted legislation are cosponsors of the securities reform bill Senator DODD and I hope to bring to the floor soon after this bill. I hope that we can follow our colleagues in the House and enact comprehensive but fair legal reform in the 104th Congress. I appreciate all of the hard work that went into this bill and hope that we will pass it.

Mr. GLENN. Mr. President, product liability reform is long overdue and I am pleased that the Senate is acting favorably on this bill. I have cosponsored product liability reform legislation in three previous Congresses.

I believe that this legislation is good for both consumers and businesses. Our product liability system is out of control and reform is desperately needed. Under our current system manufacturers of products are subject to a patchwork of varying State laws whose beneficiaries are most often lawyers instead of litigants.

The Congress is currently debating the proper role of the Federal Government across a broad range of issue areas. Many believe that functions now conducted at the Federal level should be moved to the States. On this issue I believe that we need a more uniform system of product liability and therefore Federal standards are necessary.

The current system is unfair to consumers. Much too much of the money paid by manufacturers goes to attorneys' fees instead of the injured party. the high cost of product liability insurance means higher costs for consumers. Because of the unpredictability of the current system, many severely injured consumers receive less than they deserve while mildly injured consumers often recover more. Furthermore, because of unpredictability, cases which are substantially similar receive very different results. Product liability cases often require a great deal of time and many claimants are forced to settle because of economic necessity.

The current system is unfair to manufacturers. The cost of litigation is a substantial expense to companies. Companies spend more on legal costs and less on other important areas such as research and development. In some cases manufacturers decide not to invest in or develop new products because of product liability concerns. Ultimately this burden or product liability makes our companies less competitive in world markets than foreign companies.

During the debate on this legislation, I have been particularly concerned that as we reform our product liability laws we do not affect the rights of individuals to bring suits when they have been harmed. On the contrary, it is my intent to bring rationality to a system that has become more like a lottery. For me, legal reform does not mean putting a padlock on the court house door.

There are several very important improvements that this legislation will provide. A statute of repose of 20 years is established for durable goods in the workplace. After 20 years no suit may be brought unless there is an expressed warranty.

Joint liability is abolished for noneconomic damages in product liability cases. Defendants are liable only in direct proportion to their responsibility for harm. Therefore, fault will be the controlling factor in the award of damages, not the size of a defendant's wallet.

Another important area is punitive damages. I am supportive of raising the standard of proof to clear and convincing evidence. I am very concerned, however, about the establishment of caps on punitive damages and that the bill not impose a one size fits all prescription. In fact this is the issue that kept me from cosponsoring this legislation during this Congress. The bill originally provided for a proportional cap based on economic damages. During the amending process, that cap was improved by including all compensatory damages. Even with that improvement, however, the bill remained too restrictive. I support the further inclusion of the judge additur provision allowing an increase in punitive damage awards in especially egregious cases.

However, I believe that an additional provision in the additur section is without merit. That provision would allow a defendant another trial on damages should additur occur. This goes against the fundamental principles behind product liability reform—fairness, simplification and streamlining the system. Instead, this provision could provide a never ending litigation cycle which will insure full employment for all lawyers. And it increases the burden on an already overburdened legal system. This one provision is so egregious, that it prompted my vote against cloture on the Gorton-Rockefeller compromise which I found otherwise acceptable. I am pleased that Senators ROCKEFELLER and GORTON intend to address this language in conference.

Unfortunately, the product liability legislation this year turned into a Christmas tree attracting numerous unrelated items that had never been in the bill before. The expansion of the legislation to include medical malpractice and general civil liability litigation, as Senator ROCKEFELLER has accurately pointed out, caused the tree to topple over. Those matters should and will be addressed more completely in separate legislation.

During the debate, the Senate considered several amendments addressing medical malpractice. I believe action is needed to ensure timely and appropriate awards for patients who are harmed by negligent medical care, while at the same time protecting health care providers from unwarranted lawsuits and the need to practice costly defensive medicine.

I supported a medical malpractice amendment offered by Senator KENNEDY which was based on provisions contained in comprehensive health care reform legislation in the last Congress. This approach requires States to establish alternative dispute resolution mechanisms so that cases can get an early hearing, and it limits attorney's contingency fees to one-third of the first $150,000 awarded and 25 percent thereafter. I regret that this amendment, which would have modified Senator MCCONNELL's medical malpractice amendment, was defeated.

I oppose Senator MCCONNELL's medical malpractice amendment, for both substantive and procedural reasons. I was concerned that the amendment did not allow States to adopt their own medical malpractice laws if they were more beneficial to consumers, and I opposed its caps on punitive damages.

I am hopeful that the Senate will return to the important issue of medical malpractice reform when the Labor and Human Resources Committee reports the bill it has approved and during debate on health care reform measures.

With the addition of medical malpractice and general civil liability, efforts to pass product liability bill reform were diminished. All of these extraneous items have threatened passage of a good product liability bill and the White House has also made it clear that they would veto such Christmas tree legislation.

In an effort to pare the bill back to its core principles, I opposed motions to cut off debate on the bill. I believe that through this process, the bill now provides effective product liability reform and its chances of enactment are improved. I applaud the efforts of Senators ROCKEFELLER and GORTON in the enormous amount of work undertaken to pass this legislation.

Mr. ROTH. Mr. President, the Senate's debate on product liability reform has revealed that many citizens and many members of the business community strongly favor legislation that would alter significant aspects of tort law. Products liability law traditionally has been a matter of State law, and the primary venue for products cases traditionally has been the State courts, which are our Nation's courts of general jurisdiction. Proponents of the products liability legislation have asked us, then, to change the laws of each State by creating Federal standards that would apply in all products cases, whether they are brought in Federal or State courts.

I oppose Federal products liability legislation because it will preempt whole areas of State law that have been developed incrementally over many, many years. The legislation does not deal with Federal question jurisdiction or any Federal cause of action. Instead, it pertains to an area of law that has long been the primary responsibility of State courts. If it is to occur, the reinvention of tort law should occur through the State courts and legislatures, which are best situated to determine and control the impact of reform within their own communities.

We are not dealing in an area where the States have proven incapable of enacting change. The vast majority of States have already adopted some type of tort reform, and many States are considering further changes. These reform measures have varied widely. Some have involved more dramatic changes than the Senate has debated; some have involved more modest changes; and some have involved referendums on important Sate constitutional provisions. In my own State of Delaware, the State legislature has before it several different tort reform proposals.

The impact of the reforms passed so far at the State level is unclear, but at least by one measure, the State reforms appear to be having a positive effect. In a recent survey involving 1993 data, American businesses for the first time in many years reported that they spent less on insurance and other risk-related expenses than they did the year before. Much of the savings came from changes enacted by States to their workers compensation laws, which have enabled employers to contain their workers compensation costs in various ways. The survey reported that the cost businesses paid for liability risks, which includes products liability, had leveled out. This is encouraging news.

The patchwork course of tort reform at the State level has not happened with the alacrity or the uniformity that many reform proponents would like to see. But the State efforts demonstrate why Federal legislation in this area is so profoundly misguided. In the best tradition of our Federal form of Government, the States have balanced, and in many instances are still considering how to balance, the competing interests in the tort reform debate for their own communities. We stand poised to upend that State-based process in favor of legislation that purports to create uniform Federal standards. In doing so, we are involving the Federal Government intimately in an area where it does not belong.

The Supreme Court's recent ruling in United States versus Lopez, the case which struck down as unconstitutional the Federal Gun Free School Zones Act, raises a serious question as to whether the Federal Government is permitted to take over the law of products liability.

I oppose the products liability legislation not because of any specific provisions being debated, but because the

federalization of this area of the law is a bad idea. Federalizing products liability law embarks us, I fear, on a course where over the years Congress will succumb to a creeping temptation to federalize other areas of State law solely, as in this case, on the grounds of convenience. I am wary of where that course leads.

(At the request of Mr. ROCKEFELLER, the following statement was ordered to be printed in the RECORD.)

• Mr. LIEBERMAN. Mr. President, due to the death of a close family member, I am regrettably unable to be present on the Senate floor today to join my colleagues in passing product liability legislation. It is day long awaited by those of us who have been working on behalf of reform for years only to be denied, not only passage of a bill, but full and open debate. I was proud to be a cosponsor of past product liability bills, including this year's bill, S. 565.

Credit for this remarkable turn of events is due to Senators ROCKEFELLER and GORTON, who have labored long and hard on the Senate floor over the last 2 weeks and, quite literally, for years to produce a fair bill. It is their perseverance and fair treatment of all that is responsible for our success today. Their staffs have done extraordinary work on their behalf and deserve all of our thanks—Tamera Stanton, Ellen Doneski, Lance Bultena, Trent Erickson, and others.

Were I present today, I would have voted to table Harkin amendment No. 749, to table Dorgan amendment No. 629 and, of course, I would have enthusiastically voted "yes" for final passage.

Mr. President, I would ask unanimous consent that I be added as a cosponsor of the bill as passed by the Senate today. This is an important first step toward comprehensive reform of our legal system. It is incremental reform, but it's significance should be understated. It establishes some important principles for further reform: parties responsible for harm must be held fully accountable and parties who have caused no harm should not be bullied into settlements by a system that does more to compensate lawyers than to achieve justice for injured people.•

Mr. PRESSLER. Mr. President, as we conclude the debate over S. 565, the Product Liability Fairness Act, we have come full circle.

COMMITTEE ACTION

On March 15 I joined with Senators GORTON and ROCKEFELLER in introducing legislation designed to reform that portion of America's tort system dealing with products liability. Two days of hearings were conducted on the bill and on April 6 the Senate Committee on Commerce, Science, and Transportation, of which I am chairman, met in executive session to consider the legislation.

During the committee process there was talk of expanding the bill to encompass a broader array of tort reform. As chairman, I resisted efforts to expand the legislation into any areas that did not fall within the jurisdiction of the Commerce Committee. Do not get me wrong. I support more broad-based tort reform. My voting record over the past 2 weeks proves that fact. However, during committee consideration I believed it was important not to add provisions that fall under the province of other Senate committees. As a result, on April 6 the Commerce Committee voted 13 to 6 to send a products liability reform bill to the full Senate.

SENATE CONSIDERATION

On April 24 the full Senate took up the measure. Over the past 2½ weeks the legislation has consumed some 90 hours of Senate debate. It has been a constructive process. No one can say this body did not fully explore the issues involved. No one can say we blocked any attempts to make changes to the legislation. Indeed, it was those—like myself—who favored a broader bill that found themselves blocked.

Since April 24, we have debated and voted upon over 30 amendments. Roughly a dozen of those dealt with reforming the medical malpractice system. Senator MCCONNELL introduced a broad reform amendment similar to legislation that had been fully debated by the Committee on Labor and Human Resources. That major amendment, together with a number of smaller malpractice reform measures passed the Senate and became part of the bill. I was proud to support these efforts and voted for many of the malpractice initiatives.

Next the Senate turned its attention toward broadening reforms concerning punitive damages. By considering some half dozen punitive damages amendments and adopting several—including major provisions offered by Senators DOLE and HATCH, by Senator SNOWE and by Senator DEWINE—a majority of the Senate worked its will to expand the reform of punitive damage awards from product liability cases to include all civil cases. Again I supported these efforts and worked for their passage.

Finally, the Senate turned to a consideration of joint and several liability. S. 565 as reported contained a provision abolishing joint liability for noneconomic damages. As to these damages, defendants would be liable only in direct proportion to their responsibility for the claimant's harm. They would not be responsible for the harm caused by another defendant who later was found unable to pay the compensation awarded. In other words, with regard to noneconomic damages, a defendant's liability would be several and not joint. Senator ABRAHAM offered an amendment on the floor to extend this concept to all civil cases. Unfortunately, that amendment was tabled.

Mr. President, these actions brought us to Thursday of last week. They also put a majority of the Senate on record in favor of broad-based legal reform. Most importantly, our efforts produced a fair, reasonable, and balanced bill.

Sadly, our efforts were not enough. Last Thursday the Senate failed in two votes to end debate, allow a vote on final passage of the bill, and move to a conference with the House of Representatives to work out the difference between our bill and the much more sweeping legislation passed by the House earlier this year.

As a result, Senate leadership crafted an alternative bill. That measure, introduced Friday as a substitute to the pending legislation, returned the reform initiative to its Commerce Committee roots. That proposal, along with the amendment we are debating today, is very similar to S. 565 as reported by the Commerce Committee.

How did this happen? Quite simply the opponents of broad-based tort reform were highly effective in their campaign against the legislation. Like much of the debate over the issue of civil justice reform, the rhetoric tended to get very emotional and often strayed off course.

THE TRUTH ABOUT THE BILL

Mr. President, the truth is this legislation would not change any of what is right with our current legal system. The courthouse doors would remain open. Consumers would still have a full range of rights. Persons wrongfully injured still would be compensated. Tort cases could be used to provide a strong check on corporate behavior. Contingent fees would continue to allow ordinary citizens with limited means the ability to bring suit. What would change is that frivolous lawsuits would be curtailed—pure and simple.

In an earlier statement I outlined how the bill's provisions concerning punitive damages, the statutes of limitations and repose, joint and several liability, defenses for alcohol and drug abuse, and biomaterial suppliers would benefit small business, consumers, and those injured by products. Therefore, I will not take the Senate's time to reexamine those issues today. It is not necessary. Under the latest alternative we have before us today, the things I said in that statement continue to apply.

I would add only a few comments concerning the views of the American people—specifically the citizens of my home State of South Dakota—with regard to our legal system. A recent poll conducted in my State found that 83 percent of survey respondents say that "the present liability system has problems and should be improved," while only 10 percent say that "the present liability lawsuit system is working well and should not be changed."

In addition, this is not a partisan issue: 78 percent of Democrats, 83 percent of Independents, and 88 percent of

Republicans in South Dakota responding to the survey say there are problems that need to be improved. of those who had served on a civil trial jury, 79 percent say the system has problems and needs improvement.

Mr. President, the pending measure is not as broad as I would like. I truly wish we could have done more to address the problems of the tort system generally and not limit ourselves simply to product liability cases. However, I am gratified the model used by the Senate for product liability reform continues to be the bill reported to this body by the Commerce Committee. It represents an excellent move forward and I strongly urge all of my colleagues to vote for this legislation.

Mr. BINGAMAN. Mr. President, I rise today in opposition to H.R. 956, the Product Liability Act of 1995.

I have closely followed the debate on this legislation over the past 2 weeks and I have come to the conclusion that despite the efforts of many of this Chamber, including my good friend from West Virginia, to craft a balanced bill, the bill we are voting on today falls short of that goal.

Mr. President, the issues we have debated over the course of the past 2 weeks are complex and far reaching. Contrary to what some would have the American public believe, the solutions to the problems facing our legal system cannot be explained away in 30-second sound bites or by anecdotal evidence. Each day throughout this country, judges and juries struggle to determine what is meant by justice, and, I believe in the vast majority of cases, these people, our neighbors, friends, coworkers and family, do a remarkable job of determining what is fair and what is just.

I have supported reforms to our legal system in the past and was prepared to support a reasonable reform measure at the end of this debate. I am a cosponsor of S. 240, the Securities Litigation Reform Act of 1995, authored by my colleagues from New Mexico and Connecticut. I have supported my own State's efforts at reform in the area of product liability and medical malpractice, and I worked with my colleagues on the Labor and Human Resources Committee last year to fashion reasonable medical malpractice reform during the health care reform debate. Last week, I voted for an amendment by my colleague from Massachusetts, Senator KENNEDY, that was a reasonable approach to medical malpractice reform and would have protected the rights of States such as New Mexico to enact their own reform.

Indeed, a proposal that would have significantly improved this legislation was considered by Senator BREAUX. This amendment would have created a truly uniform statute of repose and addressed the concerns about the elimination of joint and several liability in a reasoned and balanced matter. The amendment also would have allowed a jury to determine whether or not punitive damages are warranted in a particular case and would have allowed the judge to determine the amount of punitive damages that should be awarded. Unfortunately, Senator BREAUX did not have the opportunity to offer his amendment and the Senate did not have the opportunity to debate it as a result of cloture being invoked yesterday.

I have come to the conclusion that the bill that we vote on today tilts the scales too heavily against protection of the rights of injured victims and against just punishment of dangerous practices. Also, Mr. President, I am concerned about the provision limiting the award of punitive damages in cases filed against a small business. I take a back seat to no one in my concern for small businesses and have worked throughout my career in the Senate to promote the growth and prosperity of small businesses especially in my home State. However, the provision contained in this bill is not well considered; I am afraid that it would lead to more litigation, not less, and arbitrarily eliminate the opportunity for injured plaintiffs to recover fair and just compensation for damages inflicted as a result of conscious and flagrant indifference to their safety. That is what we are talking about Mr. President, not simply a mistake, but a conscious and flagrant indifference to the safety of consumers.

Mr. President, I would say to my friend from West Virginia, Senator ROCKEFELLER, and my friend from Washington, Senator GORTON, that I commend them for their efforts during this debate to bring reason to our deliberations. I know that they have worked diligently and in good faith to develop meaningful and balanced legislation in this area. Unfortunately, I do not believe that the bill before us reaches those objectives and for that reason I intend to vote against this bill and urge my colleagues to join me.

Mr. KERRY. Mr. President, when we talk about reforming product liability law, we are talking about taking away the rights of U.S. citizens. This is serious business—among the most serious things we can do in the Senate, and it is from this perspective that we must approach this debate.

Cloture has been invoked and we are about to vote on final passage. But before we haphazardly strip citizens of their rights, we need to take a long, hard look at what this means to people—how it affects families and children and average, hard-working people who have suffered.

Let us take a representative case. It is a wrongful death case.

A woman drives a Pinto to the supermarket. Someone bumps into the rear of the car, and the car explodes—it explodes. She is tragically burned alive—a wife, a mother, a human being burned alive because of what, after years of legal hassling and thousands of dollars in legal fees, lawyers hours, and a legal battle that has become part of tort history, Ford had calculated that it was cheaper to settle than to protect the lives of every Pinto owner with a recall.

It made good business sense to take the risk of people dying.

Mr. President, that kind of business sense is exactly what I am here to fight against.

I am here to fight for the husband of that woman in the Pinto. I ask my colleagues—would you settle for $250,000 in exchange for losing your spouse and destroying your life?

Is that fair? Is that just?

Mr. President, if this bill were to become law, you would not even get the $250,000 because there is not a lawyer in the country who would take the case.

No law firm could afford to go up against the Ford Motor Co., with its host of attorneys and huge legal budget, and an infinite ability to push motions and appeals to the limit and slow down the process to their advantage. It just would not happen.

Mr. President, I cannot sanction stripping this legal right from even one American. I cannot do it. And anyone who can, should look into the eyes of that husband. They should look into the face of the thousands and thousands of victims across this country who seek simple justice and fairness and ask only to be given a chance to fight the big guys.

It is a matter of fairness. It assures that those who do not have the resources to fight the richest and most prominent American corporations when they are wrong will have a chance for simple justice.

I am here to fight for average hard-working Americans and to put a face to this legislation—to talk about how this bill will affect real Americans. Real Americans, like the 5-year-old boy in New Bedford, MA, who died in a house fire after the flammable material on a couch ignited, or the 8-month-old baby who suffered second- and third-degree burns on his arms, legs, and back in a house fire that started when the bedding in his crib was ignited by a portable electric heater.

Or, the eight working-class families in Woburn who sued two of our Nation's biggest corporations because they suspected the companies had polluted the East Woburn water supply with highly toxic industrial solvents, causing death and injury to their children.

The Woburn case took 9 years, and the attorney that pleaded the case spent $1 million of his own money on it. The jury ultimately found one of the companies negligent, and the scientific research done during the 9-year

trial demonstrated the link between the industrial solvents in the water supply and human disease. The company is now helping to clean up the polluted aquifer. The attorney has said that if this bill were law today, he would never have considered the case.

If we pass the Dole substitute to H.R. 956, I fear we will be doing great harm. Our votes will have a serious impact on real Americans.

Mr. President, our laws play a critical role in fostering a competitive economic environment by establishing groundrules for fair competition and by helping to reduce the costs of doing business. But I believe Congress has a special responsibility to ensure the laws we write are reasonable and fair; we must weigh the impact of laws will have on both consumers and business.

In the 10 years I have considered product liability reform at the Federal level, I have heard proponents of reform argue that consumers lose under the present system. They have argued that injured consumers receive inadequate compensation, and that injured consumers wait unreasonable amounts of time in litigation—on the average of 3 years—before they receive compensation. They have also argued that injured consumers face closed courthouse doors because the statutes of limitation have expired on their cases.

Proponents of reform have stressed that companies in the United States also lose under the current system. They have pointed to insurance rates that disable American manufacturers by forcing them to pay 10 to 50 times more for product liability insurance than their foreign competitors. They have claimed there is an explosion in products liability litigation, with uncontrollable punitive damages awards. They have argued that the present system of lottery liability, where liability differs from State to State, does not enhance the safety of U.S. products.

Each time the Senate has considered products liability legislation, I have measured the legislation against four tests: Is it fair to injured consumers; will it help lower insurance rates for American business; will it help reduce the number of tort cases and lower the cost of litigation, the transaction costs, for American business; and will it create uniformity in the laws covering products liability or generate more confusion in the legal system?

In my examination of whether S. 565, the products Liability Fairness Act, and the Dole substitute satisfy these tests, I have concluded that this legislation fails on each account. It does not address the real concerns of business, nor is it fair to consumers.

IS THE LEGISLATION FAIR TO CONSUMERS?

Consumer products are responsible for an estimated 29,000 deaths and 30 million injuries each year. But, according to the most authoritative study on punitive damages, conducted in 1993 by professors at Boston's Suffolk University Law School and Northeastern University, there were only 355 awards in products suits from 1965 to 1990, and half of these awards were reduced or overturned. In my own State of Massachusetts, there were absolutely no punitive damages awarded in products cases.

Contrary to ensuring that injured consumers will receive adequate compensation in relation to their actual damages, this legislation imposes a cap on punitive damages. This is perhaps the most damaging aspect of this legislation to consumer interests. Although the cap has been amended to equal the sum of economic and noneconomic damages, a cap is still a cap.

In our civil justice system compensatory damages—economic and noneconomic for pain and suffering—compensate victims; in addition, punitive damages may be awarded by juries to punish the wrongdoer.

As such, punitive damages are often the only way individual Americans can force reckless defendants to change their conduct. However, despite the effectiveness of punitive damages as deterrents, they are exceedingly rare.

And the new standards imposed for punitives in this bill will make them more rare than the Alabama sturgeon.

Under most State laws, the defendant can be found liable for punitive damages if they engaged in reckless or willful and wanton or grossly negligent type of behavior.

But under this bill, Mr. President, such behavior is not enough. A plaintiff must show that a company engaged in conduct manifesting a "conscious, flagrant, indifference to safety". I have no idea what that means, Mr. President. but it certainly appears to be a tougher standard to meet.

Moreover, it is unclear how the cap on punitives in this bill would affect the 39 States that presently either do not permit punitive damage awards or have enacted measures that significantly reduce the size and frequency of such awards.

Far from ensuring injured consumers will enjoy expeditious resolution of their case, this legislation could prolong litigation by allowing either party to request a separate hearing in order for punitive damages to be awarded. Far from ensuring courthouse doors remain open to injured consumers, this bill imposes a 2-year statute of limitation and shortens the statute of repose by 5 years from last year's bill.

If this bill truly protects consumers interests, why is it opposed by every major consumer group in America?

If this legislation had been in effect, many cases would simply not have been possible. Let me give just one more example here:

In 1988, Playtex removed from the market its super-absorbent tampons linked to Toxic Shock Syndrome only after a $10 million punitive damages award following the death of a woman who used the tampons.

The Tenth Circuit Court of Appeals found "Playtex deliberately disregarded studies and medical reports linking high-absorbency tampons fibers with increased risk of toxic shock at a time when other manufacturers were responding to this information by modifying or withdrawing their high-absorbency tampons."

Playtex subsequently strengthened its warnings and began a public awareness campaign about the dangers of toxic shock. It is doubtful whether a cap of $250,000 on punitive damages would have caused Playtex to alter its behavior.

If the cap on punitive damages contained in this legislation is enacted, wrongdoers may find it more cost effective to continue their bad behavior and risk paying punitive damages. I do not believe we should pass a bill that reduces the incentive for companies to produce the safest products.

WILL THIS LEGISLATION LOWER INSURANCE COSTS FOR BUSINESSES?

In testimony before the Commerce Committee several years ago, the American Insurance Association stated:

> The bill is likely to have little or no beneficial impact on the frequency or severity of product liability claims * * * And it is not likely to reduce claims or improve the insurance market.

So, this legislation will not provide businesses with cheaper insurance rates. Insurance premiums for most industries account for less than 1 percent of a business' gross receipts. Such a small percentage hardly threatens the viability of business and should not result in increased costs to consumers.

Over the last decade, product liability insurance cost 26 cents per $100 of retail product sales, which would account for $26 on the price of a $10,000 automobile. Since 1987, according to a study by the Consumer Federal of America, product liability insurance premiums have actually dropped by 47 percent, from $4 billion to $2.7 billion, a fact that was confirmed by a 1992 Commerce Department study.

Let us take a look at Florida. In Florida's 1986 tort reform law, the State eliminated joint and several liability, limited noneconomic damages to $450,000, limited punitive damages, and required the insurance industry to make rate filings indicating the effect of the changes in its tort laws on product liability insurance rates.

Yet, Aetna's subsequent rate filing listed the effect of each change on its rates as zero. If such dramatic changes in Florida's tort reform law resulted in no lowering of liability insurance costs for a major carrier like Aetna, where is the evidence to suggest this bill will produce different results?

WILL THE LEGISLATION LOWER THE COST OF PRODUCTS LIABILITY LITIGATION FOR BUSINESSES?

Proponents of this legislation speak in terms of an explosion in product liability litigation. However, the evidence belies this characterization. In fact, the number of nonasbestos products liability suits in Federal courts has declined almost 40 percent since 1985. In State courts, where most products liability claims are filed, lawsuits have remained constant since 1990, according to testimony presented to the committee on April 3, by the National Center for State Courts.

The 1992 annual report of the National Center for State Courts found that tort cases are approximately 9 percent of the 10 million civil filings in State courts and products cases are 4 percent of these—40,000.

Only one-third of 1 percent of all tort filings in State courts are product filings.

Of all tort filings in 1991, 58 percent were related to automobile liability; 33 percent were miscellaneous; 5 percent were malpractice; and 4 percent were products. Since 1990, the national total of State tort filings has fallen by 2 percent.

In 1990, the Rand Corp. found that most injured Americans never file a lawsuit for their injuries: only 10 percent of injury victims ever use the tort system to seek compensation for their injuries.

This report also found that only 7 percent of all compensation for accident victims is paid through the tort system. The report observed:

> Americans' behavior does not accord with the more extreme characterizations of litigiousness that have been put forward by some.

If there has been a litigation explosion, it is not in the area of products liability. Once again, this legislation misses the target in addressing the real litigation problems facing business.

WILL THIS LEGISLATION BRING UNIFORMITY TO PRODUCT LIABILITY LAW?

Tort law has traditionally been a State responsibility, and the imposition of Federal products standards upon State tort law would, according to the National Conference of State Legislatures, "create confusion in State courts."

Testimony by the Conference of Chief Justices was even more emphatic:

> If the primary goal of this legislation is to provide consistency and uniformity in tort litigation, we are concerned that its effect will be the opposite.
>
> Preempting each State's existing tort law in favor of a broad Federal product liability law will create additional complexities and unpredictability for tort litigation in both State and Federal courts, while depriving victims of defective products of carefully reasoned principles and procedures already developed at the State level.

This bill will not end the search of the sponsors for a single settled law because it does not create Federal question jurisdiction. The legislation would preempt all related State law and substitute Federal standards, but it would impose the Federal standards in a single overlay upon the 56 existing State court systems as well as the Federal courts.

The result will be both State and Federal courts applying a mix of State and Federal law in the same case; State supreme courts will no longer be the final arbiters of their tort law. The U.S. Supreme Court, which many experts argue is already overburdened, will become the final arbiter of this new legal thicket.

So, here we have what is indeed an irony: Those who ordinarily preach the virtue of reserving power to the States are instead advancing legislation to usurp the legitimate authority of States.

At a time when many in Congress are intent upon returning responsibility for many Federal programs to the States, this legislation would preempt State law.

Mr. President, the sponsors of this legislation have worked extremely hard, and I particularly wish to commend my friend from West Virginia for his tireless efforts on behalf of this legislation. I also commend the ranking Democrat on the Commerce Committee, Senator HOLLINGS, for his stalwart defense of consumer interests.

For all of this effort, I regret that I cannot support this bill. I cannot support it for two very simple reasons. The legislation is patently unfair to consumers, and it will not resolve the products liability problems businesses tell me they face.

It will remove from ordinary Americans the power they retain in the jury box to force accountability for dangerous, careless, or reckless behavior. In the jury box, each American can bring about positive change. If we undermine the ability of our citizens to force changes in bad behavior, we will have compromised our Nation's core values.

While many Americans increasingly sense an erosion of personal responsibility, our civil justice system remains one institution that holds individuals and organizations accountable for their behavior. Make no mistake, by restricting the civil justice system, this bill will take rights away from Americans.

All of the available evidence on this legislation shows it will not make businesses more competitive by reducing insurance rates or the costs of corporate litigation, and it will not create national uniformity in products liability law.

A great deal of hype has been generated about this issue, and after 15 years, it appears to have taken on a life of its own. But all the lobbying and advertising cannot convince me that this legislation will accomplish its stated goals.

The Dole substitute to H.R. 956 fails to strike a reasonable balance between promoting the competitive interests of business and protecting the rights of consumers. It will create a nightmarish new legal thicket that should be avoided rather than embraced. It is unfortunate that after all the effort we could not have achieved a reasonable balance.

After we have argued all the complicated points of law, after we have poured over horror story after horror story, the issues boil down to one simple point: This bill is not fair, and it should be rejected.

I yield the floor.

Mr. GORTON. Mr. President, I ask unanimous consent that a letter I received from the National Federation of State High School Associations be printed in the RECORD.

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

NATIONAL FEDERATION OF STATE HIGH SCHOOL ASSOCIATIONS,
Kansas City, MO, May 9, 1995.

Hon. SLADE GORTON,
U.S. Senate, Washington, DC.

DEAR SENATOR GORTON: On behalf of the National Federation of State High School Associations, I want to commend you for your leadership on legislation to address the long overdue reform of our civil justice system. We applaud your efforts to rein in the exploding costs of litigation that, if unchecked, threaten to bankrupt non-profit organizations such as ours and our member affiliates. The National Federation is comprised of 51 state high school associations, with the primary purpose of promulgating sports and non-sports playing rules, including those specific to safety issues, for more than 20,000 schools and approximately 10,000,000 students each year. Additionally, our member associations establish and enforce the eligibility rules under which all boys and girls compete in high school athletics.

The legislation pending before the United States Senate, The Product Liability Fairness Act of 1995 (H.R. 956), sets limits on all product liability cases. Furthermore, the bill as currently amended, would eliminate joint liability for non-economic damages. Instead, only several liability would be allowed which means that each defendant would be liable only for his, her, or its portion by reason of its proportion of the fault causing the injury. Economic damages, i.e. lost wages, medical costs, etc. would remain joint and several at the discretion of each state.

We strongly agree with your comment on the floor this past week stating "it is unfair and unproductive to make defendants pay for damages of a nature that are literally beyond their control or beyond their fault." This fundamental concept should apply to the civil justice system as well.

Let me cite two examples of costly litigation we recently incurred which epitomize the unfairness and counterproductive nature of current civil law. Both occurred in school swimming pools.

First, in Indiana a high school boy was "leap frogging" off the starting platform, prior to the start of practice, despite repeated warnings from his coach. On one such

leap, his foot got caught under the platform; he fell head first into the water and struck his head on the pool bottom. Tragically, he suffered a neck injury that ultimately resulted in quadriplegia. While this unimaginably horrible accident was not related to any swimming competition, the National Federation was sued simply because it writes the rules for interscholastic swimming, including rules related to standards for equipment and facilities such as the depth of swimming pools.

Yet another incident occurred in Michigan during a water polo practice. This incident involved a high school boy who jumped off the platform over a lane designation rope and struck his head on the pool bottom. This seemingly harmless leap resulted in a lifetime of paralysis from the neck down. While the National Federation does not even write water polo rules, nor rules for the practice sessions for any sport, we were included in the law suit and incurred exorbitant legal fees for a defense that should not have been necessary.

These are but two examples of what has become a nightmare of litigation for the National Federation and its member affiliates. Without radical reforms to our system of civil justice, organizations such as ours whose sole mission is to build a consensus for safe sports competition will be unfairly jeopardized and possibly destroyed.

Unfortunately, lawyers often join sanctioning bodies such as ours in law suits as a trial strategy rather than because of a reasonable belief that the injury was caused in any way by the action of the sanctioning body. Current law discourages sanctioning bodies from setting minimum safety standards because of their fear of being joined in subsequent litigation. This is bad public policy.

Therefore, in addition to holding firm in your effort to reform the civil justice system, we urge you to include an exemption in the law for sanctioning bodies such as ours who are joined in law suits solely because they recommend minimum standards for facilities and equipment for the purpose of reducing risk inherent in participation in almost any given sport. This exemption would be consistent with your stated belief that it is unfair and unproductive to make defendants liable for incidents that are "literally beyond their control or beyond their fault."

Again, thank you for your leadership on this vital issue. The members of the National Federation of State High School Associations and I look forward to assisting you in achieving these needed reforms.

Sincerely,

ROBERT F. KANABY,
Executive Director.

Mr. BYRD. Mr. President, the Senate has been considering legislation related to product liability for almost 2 weeks. During that time I have heard from a number of West Virginians who have been harmed or injured by defective products, as well as from businesses that have been seriously impacted by lawsuits brought against them—at times somewhat unfairly. I have listened to the debate and considered how the Senate can best balance these competing interests, and have concluded that the substitute amendment offered by Senators GORTON and ROCKEFELLER does not adequately protect the rights of injured parties and consumers in two critical areas.

The first involves the issue of several or proportional liability, versus joint and several liability. Under the concept of proportional liability, a defendant is only responsible for a percentage of liability directly contributing to the injury or harm caused by the defective product. On the other hand, joint and several liability provides that each defendant who contributes to causing a plaintiff's injury may be held liable for the total amount of damages. Joint and several liability, by enabling a plaintiff to recover all of his or her damages from a single defendant with the greatest financial assets or resources—the so-called "deep pocket"—makes it more likely that the plaintiff will obtain full recovery in the event that one defendant does not have the assets to pay part of the judgment.

The proposed legislation completely eliminates joint and several liability for noneconomic damages, such as pain and suffering, while retaining it for economic damages. This means that victims would fully recover their economic damages in the form of lost income or medical expenses, but victims with higher lost incomes, such as business executives, would receive greater compensation. Victims would fully recover their economic damages, even if only one defendant among several defendants is still solvent, because the "deep pocket" would provide full compensation for economic damages; however, due to the elimination of joint and several liability for noneconomic damages the parties would only receive partial compensation for pain and suffering.

This provision could significantly reduce compensation in cases where the individual could still earn a livelihood, and thus not have large economic damages, yet that same individual could still have significant noneconomic damages. In this context, noneconomic damages could include not just pain and suffering, but also any diminishment of the quality of life, such as infertility or the loss of a limb.

The result of completely eliminating joint and several liability for noneconomic damages, then, would be that the innocent victim might not receive a majority of the compensation due if the other wrongful defendants were insolvent. I have concluded that this provision in the legislation shifts the balance too far in the direction of defendants at the expense of the victims of wrong doing in the form of defective products.

The other key provision of the legislation is the section dealing with punitive damages. Punitive damages are intended to punish willful or wanton misconduct on the part of a manufacturer or business. Furthermore, by punishing misconduct, punitive damages are intended to deter such behavior in the future.

Punitive damages therefore must take into consideration the financial assets of the defendant or guilty party. A punitive damage judgment of $250,000 may be both harsh punishment and a significant deterrent to a small business, but it is insignificant to a large corporation. Any cap on punitive damages can only serve to benefit, if not condone, egregious and wanton behavior by large corporations.

The legislation limits punitive damages to the greater of $250,000 or two times the total economic and noneconomic damages. The bill also stipulates that a judge may add to these punitive damages, and exceed the cap, at his discretion. I am concerned that this "judge additur" provision does not fully resolve the problem of capping punitive damages for large corporations. First, many judges may be reluctant to overrule a jury's decision, and add to the punitive judgment. Second, the effect could be arbitrary, as some judges may opt to add to punitive judgments, while others may not. Third, the burden of proof would be on judges to demonstrate why a larger punitive judgment that would exceed the cap is necessary, which could discourage judges from adding to punitive judgments. Fourth, it strikes at the heart of our tradition of jury judgments in such product liability and civil litigation.

I recognize that the current product liability system, which involves different laws in each of the 50 States, imposes a considerable hardship on some manufacturers, particularly in the case of small business. I endorse the goal of establishing some type of national uniformity in this area. However, I regret that I cannot support the legislation that is now before the Senate. While national uniformity is a laudable goal, any national standard must also fully protect the rights of consumers and victims of harm caused by defective products.

While I may disagree on several of the provisions included in this measure, I would be remiss if I did not acknowledge and salute the hard work and leadership of Senator ROCKEFELLER. He believes in this legislation. He has put his heart into working on it, and I believe that he is correct in that there are inequities in the present system which need to be addressed. My opposition notwithstanding, I want to commend both Senator ROCKEFELLER and Senator GORTON for their tireless efforts on behalf of product liability reform.

Mr. LEVIN. Mr. President, I believe that there is a strong argument to be made for uniformity in product liability law since so many products are sold across State lines.

But there is no uniformity in this bill. This bill contains limits and restrictions on compensation for injuries caused by defective products, but those limits and restrictions are not uniform. On the contrary, the bill contains a

one-way preemption provision, which allows States to adopt virtually any law that differs from the so-called national standard, as long as that law is more restrictive than that standard. A patchwork of State laws is still permitted, provided that the divergences are in the direction of greater restrictions on the injured party.

As I pointed out earlier in this debate, every single provision of this bill is written to prohibit State laws that are more favorable to plaintiffs. But the only provision of the bill that would prohibit State laws that are more favorable to defendants is the statute of limitations. We are not adopting true national standards at all.

This bill is not balanced, it is not uniform, and I cannot support it.

I ask unanimous consent that a table demonstrating the one-way nature of the preemption in this bill be printed in the RECORD.

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

PREEMPTION OF STATE PRODUCT LIABILITY LAWS UNDER S. 565, AS REPORTED

	State laws more favorable to plaintiffs	State laws more favorable to defendants
Liability of product sellers	Prohibited	Allowed.
Alcohol or drug abuse defense	do	Do.
Misuse or alteration of product defense	do	Do.
Punitive damage limitations	do	Do.
Statute of limitations	do	Prohibited.
Statute of repose	do	Allowed.
Joint and several liability (non-economic damages).	do	Do.
Biomaterials provisions	do	Do.

Ms. MIKULSKI. Mr. President, I voted for cloture on the product liability bill because I believe it is important to the economy, job creation, international investment, and our ability to do research, especially on issues of women's health.

Mr. President, much has been said about caps. I do not like caps—caps on job creation or caps on innovative research. I do not like caps on technological advancement or caps on our ability to go global. I am opposed to caps on profits, caps on wages, or caps on opportunity.

My job as a U.S. Senator is to save jobs, save lives and save communities. I support efforts to reduce frivolous law suits and improve the efficiency of our legal system.

I have heard of cost estimates for cases that are in the millions. That's outrageous. We should make every effort to establish consistency and uniformity, but not at the price of people's fundamental right to redress.

When it comes to public health and safety I want to ensure that those responsible are in fact held accountable for their actions. For that reason, I will not support any legislation which closes the courthouse door to citizens with legitimate cases.

This is the kind of balance I support and that I believe we, as Members of Congress, need to achieve with this legislation.

Mr. President, today's cloture vote was a difficult decision for me. Product liability involves very complex and complicated issues, including joint and several liability, noneconomic versus economic damages, statute of repose, punitive damages, and alternate dispute resolution. To help me better understand product liability and its impact on people's day to day lives, I met with people on both sides of this issue. I met with business organizations and consumer organizations. All the groups made legitimate arguments expressing worthwhile and important concerns.

Some businesses are concerned about how our current system ultimately impacts their decisions about innovation and competitiveness, small businesses are concerned about going out of business all together. We should take every step we can to cut unnecessary liability costs and encourage innovation. Innovation will ultimately lead to jobs today and jobs tomorrow. We must acknowledge that innovation, particularly in the health field, is critical for out Nation's economic stability and competitiveness, and it is critical to the health and safety of American citizens.

I was particularly moved by the National Family Planning and Reproductive Health Association's position that tort reform is needed to increase investment in women's health research and technologies. Mr. President, the product liability issue has been around for quite some time. There was no doubt that I could not sign on to previous product liability reform bills introduced in the early 1980's. But, I believe the current legislation is an attempt to achieve a reasonable balance at this point.

Is this bill perfect? Of course, it is not. In this case, it is hard to put forth a perfect bill. There is no doubt that we should review this issue in the coming years and make sure it is working. If it is not working, we in Congress have the option to review it and make changes. Looking at our current system, I believe there are areas that can be improved. For that reason, I am willing to support Federal product liability reform. Many of the reforms proposed by this legislation have already been done at the State level. So, in many ways we are acting consistently with respect to the States.

Mr. President, I want to make it clear. The House bill goes too far. It includes a number of bad provisions, including severe caps on pain and suffering. To move beyond the Senate bill would be a mistake. The scales on this issue are delicately balanced. If those scales are tipped, it is unlikely I will support this bill.

Mr. PELL. Mr. President, today the Senate has passed by a convincing margin the product liability bill. It was a difficult and contentious effort, much akin to the debate that this area has generated over the last decade. I was pleased that the Senate saw fit to pass this legislation and am hopeful that a productive and successful conference with the House will follow and eventually that the President will sign this legislation into law.

I have long supported product liability reform even when it began as a somewhat lonely effort over a decade ago. Finally, with a supportive Congress, it seems that we may be coming up with a bill that can actually become the law of the land. It must be noted that in order to preserve the best possible chance of reaching that result, other areas of legal reform, such as medical malpractice and broad tort reform, have been excluded. I joined in the effort to keep this bill clean from those additions but I want to state that I support reform in those areas as well and look forward to addressing them in the future. I simply felt that this legislation was an inappropriate forum for dealing with those issues. In the end, this bill represents a workable and reasonable balance for reforming the legal procedures and standards governing how one can seek redress for harm caused by faulty products.

I congratulate the hard work of my colleagues, in particular Senators ROCKEFELLER and GORTON, who artfully and doggedly crafted a compromise that was acceptable to the Senate. They have worked hard and long, indeed for years, on this legislation and they are to be commended for their accomplishment. I await the conference report on this legislation with anticipation and express my hope for speedy final consideration.

Mr. BRADLEY. Mr. President, I rise in opposition to the Product Liability Fairness Act of 1995. Let me first say, Mr. President, that I share the concerns of the people of New Jersey and this country that our society is too litigious. I share the concerns of my colleagues and the American people that the cost of this litigation explosion is injurious to the social and economic future of this country. However, after reviewing this bill and assessing the arguments, both pro and con, I do not think that this bill strikes the appropriate balance between the desires of manufacturers and product sellers to streamline the product liability process and the ability of ordinary Americans to bring lawsuits seeking relief from injuries resulting from defective and dangerous products.

Mr. President, I favor a cap on punitive damages for small businesses. I supported the amendment of my colleague from Ohio, Senator DEWINE, which provides for a cap on punitive damages for small businesses with 25 or fewer employees and individuals with assets of less than $500,000. Small businesses are the engine that drives the

American economy and provide for at least half of this country's new employment opportunities. While a cap on punitive damage awards should be sufficient to punish and deter future action, it should also reflect the fact that a cap that may be sufficient to punish a large corporation may in fact push a small business into the abyss of bankruptcy.

However, Mr. President, I have grave concerns about the overall cap on punitive damages. The purpose of punitive awards is to punish the wrongdoer for egregious behavior and deter such behavior in the future. I believe that if we place a low cap on punitive damages, some corporations will not be discouraged from exposing consumers to dangerous products. Indeed, with predictable caps, Mr. President, wrongdoers may find it more cost effective to make dangerous decisions and risk paying punitive damages. Moreover, Mr. President, while this bill authorizes judges to increase an award of punitive damages beyond the limits of the cap, this safeguard is illusory because defendants have the right to receive a new trial—a right which they will surely exercise. Indeed, the provision in the bill will only lead to repetitive litigation, increase costs and prevent deserving consumers from obtaining their awards in a timely manner.

Mr. President, I do not need to repeat the horror stories about women who have tragically suffered and died from using dangerous products, children who have been burned by flammable clothing, or hard working Americans, who have senselessly been injured and killed as a result of defective automobiles. What needs to be repeated is that the one constant in all of these horror stories is that the manufacturer knew of the dangerous defect and failed to take adequate steps to protect the public. Mr. President, punitive damages are available to police conduct that is so egregious that the offender disregarded forseeable dangerous consequences. Indeed, as this bill provides, punitive damages are only available where there is clear and convincing evidence of a conscious, flagrant indifference to the safety of others. Given the nature of the offense, Mr. President, I firmly believe that placing a cap on punitive damages will be counterproductive to society's efforts to police and deter such egregious conduct.

Mr. President, under the present caps, cigarette manufacturers and those who irresponsibly market alcohol to intoxicated persons or minors who then kill or injure innocent victims in traffic crashes would continue to manufacture and market these products of destruction with less fear of having to one day pay the price for the massive damage that their products inflict on society. Moreover, firearms and ammunition are virtually the only unregulated consumer product in America. As such, the tort system is the only check on the safety of consumers. I am not willing, Mr. President, to place a cap on punitive damages when the result will be that such action will lessen the liability of the manufacturers who profit from these destructive products.

Mr. President, while I also think that there is a need for joint and several liability reform, I cannot endorse the blanket elimination of joint and several liability for noneconomic damages that is in the present bill. Instead, Mr. President, I favor the approach currently in operation in New Jersey, which provides for proportional liability if the defendant is responsible for 20 percent or less of the harm, several liability for noneconomic damages if a defendant is responsible for between 20 percent and 60 percent of the harm, and joint and several liability if the defendant is responsible for 60 percent or more of the harm.

Mr. President, this bill would preempt State product liability law "to the extent that state law applies to an issue covered under the Act." Proponents of product liability reform argue that Federal legislation is needed to establish uniformity. However, the bill does not require States to have uniform State laws. For example, those States that do not now allow punitive damages would not be required to award them, even though the bill provides for the award of such damages. The effect of this provision is that States can offer their individual citizens fewer rights, but not more.

Mr. President, this bill also excludes actions involving commercial loss. By excluding such actions, the bill places restrictions on the ability of individuals to seek redress from defective products, but does not place any restrictions on corporations to seek redress. For example, if a product explodes in a factory, the worker's recovery for injuries is limited by this bill; however, the factory owner may sue the product manufacturer or seller free from the restrictions of the bill for such speculative damages as the factory's loss of profits because of delays in production. Thus, the effect of this provision is to value material property over the health and safety of individual citizens.

Mr. President, we have been told that there is a litigation explosion with respect to product liability and that corporations and the business community are suffering under the weight of this explosion. However, Mr. President, excluding cases of asbestos, product liability claims in Federal courts have declined by approximately 36 percent between 1985 and 1991. Moreover, in State courts, product liability cases are approximately 4 percent of all tort filings, .0036 percent of all civil caseloads and .00097 percent of the total State court caseloads.

Mr. President, although there have been relatively few punitive damage awards in product liability cases over the last 25 years, we have been told that the threat of punitive damages encourages many product manufacturers to settle cases that they would have no problem winning in an effort to avoid having claims for punitive damages go to juries unfamiliar with the precautions that are now taken to insure that products are safe. However, Mr. President, the numbers simply do not add up to the conclusion that the business community is being treated unfairly by juries. Indeed, almost 60 percent of the product liability cases brought in 1993, plaintiffs were the losing parties.

Mr. President, it has additionally been argued that these lawsuits increase the costs of producing products in this country and thus hurt American competitiveness. However, a 1987 Conference Board survey of risk managers of 232 corporations shows that product liability costs for most businesses are 1 percent or less of the final price of a product, and have very little impact on larger economic issues such as market share or jobs. In addition, the American Insurance Association, the largest trade association representing the insurance industry, has testified that this legislation will have virtually no effect on insurance costs.

Mr. President, to put it succinctly, I do not think that the bill will really do what its proponents say it will do. As mentioned earlier, the proponents of this bill argue that the business community is suffering under the weight of a litigation explosion. They contend that this bill will decrease both the incidence and cost of litigation. Mr. President, no one disagrees that we are an overly litigious society. However, I am not convinced that this bill can correct the problem of litigiousness in society. Indeed, Mr. President, the fact is that the punitive caps provision providing for the automatic right to a new trial by defendants will serve to only increase the delay and cost of litigation. This bill tilts the scales of justice too far to the disadvantage of individual consumers. Thus, I cannot support legislation which will endanger the health and safety of hard working Americans.

In conclusion, Mr. President, because of the above stated concerns, I must oppose the Product Liability Fairness Act of 1995.

VOTE ON AMENDMENT NO. 690, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 690, the Coverdell-Dole substitute, as amended.

So the amendment (No. 690), as amended, was agreed to.

VOTE ON AMENDMENT NO. 596, AS AMENDED

The PRESIDING OFFICER. The question is on agreeing to the amendment numbered 596, the Gorton substitute, as amended.

So the amendment (No. 596), as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. GORTON. 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 bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Virginia [Mr. WARNER] is necessarily absent.

Mr. FORD. I announce that the Senator from Connecticut [Mr. LIEBERMAN] is absent because of death in the family.

I further announce that, if present and voting, the Senator from Connecticut [Mr. LIEBERMAN] would vote "yea."

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

The result was announced—yeas 61, nays 37, as follows:

[Rollcall Vote No. 161 Leg.]

YEAS—61

Abraham	Frist	McCain
Ashcroft	Glenn	McConnell
Bennett	Gorton	Mikulski
Bond	Gramm	Moseley-Braun
Brown	Grams	Murkowski
Burns	Grassley	Nickles
Campbell	Gregg	Nunn
Chafee	Hatch	Pell
Coats	Hatfield	Pressler
Cochran	Helms	Pryor
Conrad	Hutchison	Robb
Coverdell	Inhofe	Rockefeller
Craig	Jeffords	Santorum
DeWine	Johnston	Smith
Dodd	Kassebaum	Snowe
Dole	Kempthorne	Stevens
Domenici	Kohl	Thomas
Dorgan	Kyl	Thompson
Exon	Lott	Thurmond
Faircloth	Lugar	
Feinstein	Mack	

NAYS—37

Akaka	Feingold	Moynihan
Baucus	Ford	Murray
Biden	Graham	Packwood
Bingaman	Harkin	Reid
Boxer	Heflin	Roth
Bradley	Hollings	Sarbanes
Breaux	Inouye	Shelby
Bryan	Kennedy	Simon
Bumpers	Kerrey	Simpson
Byrd	Kerry	Specter
Cohen	Lautenberg	Wellstone
D'Amato	Leahy	
Daschle	Levin	

NOT VOTING—2

Lieberman	Warner

So the bill (H.R. 956), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 956) entitled "An Act to establish legal standards and procedures for product liability litigation, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product Liability Fairness Act of 1995".

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term "actual malice" means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.

(5) COMMERCIAL LOSS.—The term "commercial loss" means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss the recovery of which is governed by the Uniform Commercial Code or analogous State commercial law, not including harm.

(6) DURABLE GOOD.—The term "durable good" means any product, or any component of any such product, which has a normal life expectancy of 3 or more years or is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986, and which is—

(A) used in a trade or business;

(B) held for the production of income; or

(C) sold or donated to a governmental or private entity for the production of goods, training, demonstration, or any other similar purpose.

(7) ECONOMIC LOSS.—The term "economic loss" means any pecuniary loss resulting from harm (including any medical expense loss, work loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities), to the extent that recovery for the loss is permitted under applicable State law.

(8) HARM.—The term "harm" means any physical injury, illness, disease, or death, or damage to property, caused by a product. The term does not include commercial loss or loss or damage to a product itself.

(9) INSURER.—The term "insurer" means the employer of a claimant, if the employer is self-insured, or the workers' compensation insurer of an employer.

(10) MANUFACTURER.—The term "manufacturer" means—

(A) any person who is engaged in a business to produce, create, make, or construct any product (or component part of a product), and who designs or formulates the product (or component part of the product), or has engaged another person to design or formulate the product (or component part of the product);

(B) a product seller, but only with respect to those aspects of a product (or component part of a product) which are created or affected when, before placing the product in the stream of commerce, the product seller produces, creates, makes, constructs, designs, or formulates, or has engaged another person to design or formulate, an aspect of a product (or component part of a product) made by another person; or

(C) any product seller that is not described in subparagraph (B) that holds itself out as a manufacturer to the user of the product.

(11) NON-ECONOMIC LOSS.—The term "noneconomic loss"—

(A) means subjective, nonmonetary loss resulting from harm, including pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, injury to reputation, and humiliation; and

(B) does not include economic loss.

(12) PERSON.—The term "person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity (including any governmental entity).

(13) PRODUCT.—

(A) IN GENERAL.—The term "product" means any object, substance, mixture, or raw material in a gaseous, liquid, or solid state that—

(i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;

(ii) is produced for introduction into trade or commerce;

(iii) has intrinsic economic value; and

(iv) is intended for sale or lease to persons for commercial or personal use.

(B) EXCLUSION.—The term "product" does not include—

(i) tissue, organs, blood, and blood products used for therapeutic or medical purposes, except to the extent that such tissue, organs, blood, and blood products (or the provision thereof) are subject, under applicable State law, to a standard of liability other than negligence; and

(ii) electricity, water delivered by a utility, natural gas, or steam.

(14) PRODUCT LIABILITY ACTION.—The term "product liability action" means a civil action brought on any theory for harm caused by a product.

(15) PRODUCT SELLER.—

(A) IN GENERAL.—The term "product seller" means a person who—

(i) in the course of a business conducted for that purpose, sells, distributes, rents, leases, prepares, blends, packages, labels, or otherwise is involved in placing a product in the stream of commerce; or

(ii) installs, repairs, refurbishes, reconditions, or maintains the harm-causing aspect of the product.

(B) EXCLUSION.—The term "product seller" does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services in any case in which the sale or use of a product is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who—

(I) acts in only a financial capacity with respect to the sale of a product; or

(II) leases a product under a lease arrangement in which the lessor does not initially select the leased product and does not during the lease term ordinarily control the daily operations and maintenance of the product.

(16) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, or any political subdivision thereof.

(17) TIME OF DELIVERY.—The term "time of delivery" means the time when a product is delivered to the first purchaser or lessee of the product that was not involved in manufacturing or selling the product, or using the product as a component part of another product to be sold.

SEC. 102. APPLICABILITY; PREEMPTION.

(a) APPLICABILITY.—

(1) ACTIONS COVERED.—Subject to paragraph (2), this title applies to any product liability action commenced on or after the date of enactment of this Act, without regard to whether the harm that is the subject of the action or the conduct that caused the harm occurred before such date of enactment.

(2) ACTIONS EXCLUDED.—

(A) ACTIONS FOR DAMAGE TO PRODUCT OR COMMERCIAL LOSS.—A civil action brought for loss or damage to a product itself or for commercial loss, shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable commercial or contract law.

(B) ACTIONS FOR NEGLIGENT ENTRUSTMENT.—A civil action for negligent entrustment shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable State law.

(b) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This Act supersedes a State law only to the extent that State law applies to an issue covered under this title.

(2) ISSUES NOT COVERED UNDER THIS ACT.—Any issue that is not covered under this title, including any standard of liability applicable to a manufacturer, shall not be subject to this title, but shall be subject to applicable Federal or State law.

(c) STATUTORY CONSTRUCTION.—Nothing in this title may be construed to—

(1) waive or affect any defense of sovereign immunity asserted by any State under any law;

(2) supersede or alter any Federal law;

(3) waive or affect any defense of sovereign immunity asserted by the United States;

(4) affect the applicability of any provision of chapter 97 of title 28, United States Code;

(5) preempt State choice-of-law rules with respect to claims brought by a foreign nation or a citizen of a foreign nation;

(6) affect the right of any court to transfer venue or to apply the law of a foreign nation or to dismiss a claim of a foreign nation or of a citizen of a foreign nation on the ground of inconvenient forum; or

(7) supersede or modify any statutory or common law, including any law providing for an action to abate a nuisance, that authorizes a person to institute an action for civil damages or civil penalties, cleanup costs, injunctions, restitution, cost recovery, punitive damages, or any other form of relief for remediation of the environment (as defined in section 101(8) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601(8)) or the threat of such remediation.

(d) CONSTRUCTION.—To promote uniformity of law in the various jurisdictions, this title shall be construed and applied after consideration of its legislative history.

(e) EFFECT OF COURT OF APPEALS DECISIONS.—Notwithstanding any other provision of law, any decision of a circuit court of appeals interpreting a provision of this title (except to the extent that the decision is overruled or otherwise modified by the Supreme Court) shall be considered a controlling precedent with respect to any subsequent decision made concerning the interpretation of such provision by any Federal or State court within the geographical boundaries of the area under the jurisdiction of the circuit court of appeals.

SEC. 103. ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

(a) SERVICE OF OFFER.—A claimant or a defendant in a product liability action that is subject to this title may, not later than 60 days after the service of the initial complaint of the claimant or the applicable deadline for a responsive pleading (whichever is later), serve upon an adverse party an offer to proceed pursuant to any voluntary, nonbinding alternative dispute resolution procedure established or recognized under the law of the State in which the product liability action is brought or under the rules of the court in which such action is maintained.

(b) WRITTEN NOTICE OF ACCEPTANCE OR REJECTION.—Except as provided in subsection (c), not later than 10 days after the service of an offer to proceed under subsection (a), an offeree shall file a written notice of acceptance or rejection of the offer.

(c) EXTENSION.—The court may, upon motion by an offeree made prior to the expiration of the 10-day period specified in subsection (b), extend the period for filing a written notice under such subsection for a period of not more than 60 days after the date of expiration of the period specified in subsection (b). Discovery may be permitted during such period.

SEC. 104. LIABILITY RULES APPLICABLE TO PRODUCT SELLERS.

(a) GENERAL RULE.—

(1) IN GENERAL.—In any product liability action that is subject to this title filed by a claimant for harm caused by a product, a product seller other than a manufacturer shall be liable to a claimant, only if the claimant establishes—

(A) that—

(i) the product that allegedly caused the harm that is the subject of the complaint was sold, rented, or leased by the product seller;

(ii) the product seller failed to exercise reasonable care with respect to the product; and

(iii) the failure to exercise reasonable care was a proximate cause of harm to the claimant; or

(B) that—

(i) the product seller made an express warranty applicable to the product that allegedly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

(ii) the product failed to conform to the warranty; and

(iii) the failure of the product to conform to the warranty caused harm to the claimant; or

(C) that—

(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

(ii) such intentional wrongdoing was a proximate cause of the harm that is the subject of the complaint.

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect a product if the product seller had no reasonable opportunity to inspect the product that allegedly caused harm to the claimant.

(b) SPECIAL RULE.—

(1) IN GENERAL.—A product seller shall be deemed to be liable as a manufacturer of a product for harm caused by the product if—

(A) the manufacturer is not subject to service of process under the laws of any State in which the action may be brought; or

(B) the court determines that the claimant would be unable to enforce a judgment against the manufacturer.

(2) STATUTE OF LIMITATIONS.—For purposes of this subsection only, the statute of limitations applicable to claims asserting liability of a product seller as a manufacturer shall be tolled from the date of the filing of a complaint against the manufacturer to the date that judgment is entered against the manufacturer.

(c) RENTED OR LEASED PRODUCTS.—

(1) Notwithstanding any other provision of law, any person engaged in the business of renting or leasing a product (other than a person excluded from the definition of product seller under section 101 (14)(B)) shall be subject to liability in a product liability action under subsection (a), but any person engaged in the business of renting or leasing a product shall not be liable to a claimant for the tortious act of another solely by reason of ownership of such product.

(2) For purposes of paragraph (1), and for determining the applicability of this title to any person subject to paragraph (1), the term "product liability action" means a civil action brought on any theory for harm caused by a product or product use.

SEC. 105. DEFENSES INVOLVING INTOXICATING ALCOHOL OR DRUGS.

(a) GENERAL RULE.—Notwithstanding any other provision of law, a defendant in a product liability action that is subject to this title shall have a complete defense in the action if the defendant proves that—

(1) the claimant was under the influence of intoxicating alcohol or any drug that may not lawfully be sold over-the-counter without a prescription, and was not prescribed by a physician for use by the claimant; and

(2) the claimant, as a result of the influence of the alcohol or drug, was more than 50 percent responsible for the accident or event which resulted in the harm to the claimant.

(b) CONSTRUCTION.—For purposes of this section, the determination of whether a person was intoxicated or was under the influence of intoxicating alcohol or any drug shall be made pursuant to applicable State law.

SEC. 106. REDUCTION FOR MISUSE OR ALTERATION OF PRODUCT.

(a) GENERAL RULE.—

(1) IN GENERAL.—Except as provided in subsection (c), in a product liability action that is subject to this title, the damages for which a defendant is otherwise liable under applicable State law shall be reduced by the percentage of responsibility for the harm to the claimant attributable to misuse or alteration of a product by any person if the defendant establishes that such percentage of the harm was proximately caused by a use or alteration of a product—

(A) in violation of, or contrary to, the express warnings or instructions of the defendant if the warnings or instructions are determined to be adequate pursuant to applicable State law; or

(B) involving a risk of harm which was known or should have been known by the ordinary person who uses or consumes the product with the knowledge common to the class of persons who used or would be reasonably anticipated to use the product.

(2) USE INTENDED BY A MANUFACTURER IS NOT MISUSE OR ALTERATION.—For the purposes of this title, a use of a product that is intended by the manufacturer of the product does not constitute a misuse or alteration of the product.

(b) STATE LAW.—Notwithstanding section 3(b), subsection (a) of this section shall supersede State law concerning misuse or alteration of a product only to the extent that State law is inconsistent with such subsection.

(c) WORKPLACE INJURY.—Notwithstanding subsection (a), the amount of damages for which a defendant is otherwise liable under State law shall not be reduced by the application of this section with respect to the conduct of any employer or coemployee of the plaintiff who is, under applicable State law concerning workplace injuries, immune from being subject to an action by the claimant.

SEC. 107. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in a product liability action that is subject to this title if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) LIMITATION ON AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of punitive damages that may be awarded to a claimant in a product liability action that is subject to this title shall not exceed the greater of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(2) SPECIAL RULE.—The amount of punitive damages that may be awarded in a product liability action that is subject to this title against an individual whose net worth does not exceed $500,000 or against an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization which has fewer than 25 full-time employees, shall not exceed the lesser of—

(A) 2 times the sum of—

(i) the amount awarded to the claimant for economic loss; and

(ii) the amount awarded to the claimant for noneconomic loss; or

(B) $250,000.

(3) EXCEPTION.—

(A) DETERMINATION BY COURT.—Notwithstanding subparagraph (C), in a product liability action that is subject to this title, if the court makes a determination, after considering each of the factors in subparagraph (B), that the application of paragraph (1) would result in an award of punitive damages that is insufficient to punish the egregious conduct of the defendant against whom the punitive damages are to be awarded or to deter such conduct in the future, the court shall determine the additional amount of punitive damages in excess of the amount determined in accordance with paragraph (1) to be awarded to the claimant (referred to in this paragraph as the "additur") in a separate proceeding in accordance with this paragraph.

(B) FACTORS FOR CONSIDERATION.—In any proceeding under subparagraph (A), the court shall consider—

(i) the extent to which the defendant acted with actual malice;

(ii) the likelihood that serious harm would arise from the misconduct of the defendant;

(iii) the degree of the awareness of the defendant of that likelihood;

(iv) the profitability of the misconduct to the defendant;

(v) the duration of the misconduct and any concurrent or subsequent concealment of the conduct by the defendant;

(vi) the attitude and conduct of the defendant upon the discovery of the misconduct and whether the misconduct has terminated;

(vii) the financial condition of the defendant; and

(viii) the cumulative deterrent effect of other losses, damages, and punishment suffered by the defendant as a result of the misconduct, reducing the amount of punitive damages on the basis of the economic impact and severity of all measures to which the defendant has been or may be subjected, including—

(I) compensatory and punitive damage awards to similarly situated claimants;

(II) the adverse economic effect of stigma or loss of reputation;

(III) civil fines and criminal and administrative penalties; and

(IV) stop sale, cease and desist, and other remedial or enforcement orders.

(C) REQUIREMENTS FOR AWARDING ADDITURS.—If the court awards an additur under this paragraph, the court shall state its reasons for setting the amount of the additur in findings of fact and conclusions of law. If the additur is—

(i) accepted by the defendant, it shall be entered by the court as a final judgment;

(ii) accepted by the defendant under protest, the order may be reviewed on appeal; or

(iii) not accepted by the defense, the court shall set aside the punitive damages award and order a new trial on the issue of punitive damages only, and judgment shall enter upon the verdict of liability and damages after the issue of punitive damages is decided.

(4) APPLICATION BY COURT.—This subsection shall be applied by the court and the application of this subsection shall not be disclosed to the jury.

(5) REMITTITURS.—Nothing in this subsection shall modify or reduce the ability of courts to order remittiturs.

(c) BIFURCATION AT REQUEST OF ANY PARTY.—

(1) IN GENERAL.—At the request of any party, the trier of fact in a product liability action that is subject to this title shall consider in a separate proceeding whether punitive damages are to be awarded for the harm that is the subject of the action and the amount of the award.

(2) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in any proceeding to determine whether the claimant may be awarded compensatory damages, any evidence that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

SEC. 108. LIABILITY FOR CERTAIN CLAIMS RELATING TO DEATH.

In any civil action in which the alleged harm to the claimant is death and, as of the effective date of this Act, the applicable State law provides, or has been construed to provide, for damages only punitive in nature, a defendant may be liable for any such damages without regard to section 107, but only during such time as the State law so provides. This section shall cease to be effective September 1, 1996.

SEC. 109. UNIFORM TIME LIMITATIONS ON LIABILITY.

(a) STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), a product liability action that is subject to this title may be filed not later than 2 years after the date on which the claimant discovered or, in the exercise of reasonable care, should have discovered, the harm that is the subject of the action and the cause of the harm.

(2) EXCEPTIONS.—

(A) PERSON WITH A LEGAL DISABILITY.—A person with a legal disability (as determined under applicable law) may file a product liability action that is subject to this title not later than 2 years after the date on which the person ceases to have the legal disability.

(B) EFFECT OF STAY OR INJUNCTION.—If the commencement of a civil action that is subject to this title is stayed or enjoined, the running of the statute of limitations under this section shall be suspended until the end of the period that the stay or injunction is in effect.

(b) STATUTE OF REPOSE.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), no product liability action that is subject to this title concerning a product that is a durable good alleged to have caused harm (other than toxic harm) may be filed after the 20-year period beginning at the time of delivery of the product.

(2) STATE LAW.—Notwithstanding paragraph (1), if pursuant to an applicable State law, an action described in such paragraph is required to be filed during a period that is shorter than the 20-year period specified in such paragraph, the State law shall apply with respect to such period.

(3) EXCEPTIONS.—

(A) A motor vehicle, vessel, aircraft, or train that is used primarily to transport passengers for hire shall not be subject to this subsection.

(B) Paragraph (1) does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved which was longer than 20 years, but it will apply at the expiration of that warranty.

(C) Paragraph (1) does not affect the limitations period established by the General Aviation Revitalization Act of 1994 (49 U.S.C. 40101 note).

(c) TRANSITIONAL PROVISION RELATING TO EXTENSION OF PERIOD FOR BRINGING CERTAIN ACTIONS.—If any provision of subsection (a) or (b) shortens the period during which a product liability action that could be otherwise brought pursuant to another provision of law, the claimant may, notwithstanding subsections (a) and (b), bring the product liability action pursuant to this title not later than 1 year after the date of enactment of this Act.

SEC. 110. SEVERAL LIABILITY FOR NONECONOMIC LOSS.

(a) GENERAL RULE.—In a product liability action that is subject to this title, the liability of each defendant for noneconomic loss shall be several only and shall not be joint.

(b) AMOUNT OF LIABILITY.—

(1) IN GENERAL.—Each defendant shall be liable only for the amount of noneconomic loss allocated to the defendant in direct proportion to the percentage of responsibility of the defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable. The court shall render a separate judgment against each defendant in an amount determined pursuant to the preceding sentence.

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the claimant's harm, whether or not such person is a party to the action.

SEC. 111. WORKERS' COMPENSATION SUBROGATION STANDARDS.

(a) GENERAL RULE.—

(1) RIGHT OF SUBROGATION.—

(A) IN GENERAL.—An insurer shall have a right of subrogation against a manufacturer or product seller to recover any claimant's benefits relating to harm that is the subject of a product liability action that is subject to this title.

(B) WRITTEN NOTIFICATION.—To assert a right of subrogation under subparagraph (A), the insurer shall provide written notice to the court in which the product liability action is brought.

(C) INSURER NOT REQUIRED TO BE A PARTY.—An insurer shall not be required to be a necessary and proper party in a product liability action covered under subparagraph (A).

(2) SETTLEMENTS AND OTHER LEGAL PROCEEDINGS.—

(A) IN GENERAL.—In any proceeding relating to harm or settlement with the manufacturer or product seller by a claimant who files a product liability action that is subject to this title, an insurer may participate to assert a right of subrogation for claimant's benefits with respect to any payment made by the manufacturer or product seller by reason of such harm, without regard to whether the payment is made—

(i) as part of a settlement;

(ii) in satisfaction of judgment;

(iii) as consideration for a covenant not to sue; or

(iv) in another manner.

(B) WRITTEN NOTIFICATION.—Except as provided in subparagraph (C), an employee shall not make any settlement with or accept any payment from the manufacturer or product seller without written notification to the employer.

(C) EXEMPTION.—Subparagraph (B) shall not apply in any case in which the insurer has been compensated for the full amount of the claimant's benefits.

(3) HARM RESULTING FROM ACTION OF EMPLOYER OR COEMPLOYEE.—

(A) IN GENERAL.—If, with respect to a product liability action that is subject to this title, the manufacturer or product seller attempts to persuade the trier of fact that the harm to the claimant was caused by the fault of the employer of the claimant or any coemployee of the claimant, the issue of that fault shall be submitted to the trier of fact, but only after the manufacturer or product seller has provided timely written notice to the employer.

(B) RIGHTS OF EMPLOYER.—

(i) IN GENERAL.—Notwithstanding any other provision of law, with respect to an issue of fault submitted to a trier of fact pursuant to subparagraph (A), an employer shall, in the same manner as any party in the action (even if the employer is not a named party in the action), have the right to—

(I) appear;

(II) be represented;

(III) introduce evidence;

(IV) cross-examine adverse witnesses; and

(V) present arguments to the trier of fact.

(ii) LAST ISSUE.—The issue of harm resulting from an action of an employer or coemployee shall be the last issue that is presented to the trier of fact.

(C) REDUCTION OF DAMAGES.—If the trier of fact finds by clear and convincing evidence that the harm to the claimant that is the subject of the product liability action was caused by the fault of the employer or a coemployee of the claimant—

(i) the court shall reduce by the amount of the claimant's benefits—

(I) the damages awarded against the manufacturer or product seller; and

(II) any corresponding insurer's subrogation lien; and

(ii) the manufacturer or product seller shall have no further right by way of contribution or otherwise against the employer.

(D) CERTAIN RIGHTS OF SUBROGATION NOT AFFECTED.—Notwithstanding a finding by the trier of fact described in subparagraph (C), the insurer shall not lose any right of subrogation related to any—

(i) intentional tort committed against the claimant by a coemployee; or

(ii) act committed by a coemployee outside the scope of normal work practices.

(b) ATTORNEY'S FEES.—If, in a product liability action that is subject to this section, the court finds that harm to a claimant was not caused by the fault of the employer or a coemployee of the claimant, the manufacturer or product seller shall reimburse the insurer for reasonable attorney's fees and court costs incurred by the insurer in the action, as determined by the court.

SEC. 112. FEDERAL CAUSE OF ACTION PRECLUDED.

The district courts of the United States shall not have jurisdiction under section 1331 or 1337 of title 28, United States Code, over any product liability action covered under this title.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1995".

SEC. 202. FINDINGS.

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life-enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging inadequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

SEC. 203. DEFINITIONS.

As used in this title:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term "biomaterials supplier" means an entity that directly or indirectly supplies a component part or raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce component parts or raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term "claimant" means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR.—With respect to an action brought on behalf or through a minor, such term includes the parent or guardian of the minor.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services; or

(ii) a manufacturer, seller, or biomaterials supplier.

(3) COMPONENT PART.—

(A) IN GENERAL.—The term "component part" means a manufactured piece of an implant.

(B) CERTAIN COMPONENTS.—Such term includes a manufactured piece of an implant that—

(i) has significant nonimplant applications; and

(ii) alone, has no implant value or purpose, but when combined with other component parts and materials, constitutes an implant.

(4) HARM.—

(A) IN GENERAL.—The term "harm" means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage.

(B) EXCLUSION.—The term does not include any commercial loss or loss of or damage to an implant.

(5) IMPLANT.—The term "implant" means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(B) suture materials used in implant procedures.

(6) MANUFACTURER.—The term "manufacturer" means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section.

(7) MEDICAL DEVICE.—The term "medical device" means a device, as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)).

(8) RAW MATERIAL.—The term "raw material" means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(9) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

(10) SELLER.—

(A) IN GENERAL.—The term "seller" means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—The term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

SEC. 204. GENERAL REQUIREMENTS; APPLICABILITY; PREEMPTION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this title, a biomaterials supplier may raise any defense set forth in section 205.

(2) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this title is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 206.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this title applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this title; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this title establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this title and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this title may be construed—

(1) to affect any defense available to a defendant under any other provisions of Federal or State law in an action alleging harm caused by an implant; or

(2) to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

SEC. 205. LIABILITY OF BIOMATERIALS SUPPLIERS.

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials supplier that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c); and

(C) furnishes raw materials or component parts that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(b) LIABILITY AS MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(A)(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as

a manufacturer because the related manufacturer meeting the requirements of subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable as a seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held title to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant; and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 206(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 206, that it is necessary to impose liability on the biomaterials supplier as a seller because the related manufacturer meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(ii)(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(iii)(I) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j); and

(II) have received clearance from the Secretary,

if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

SEC. 206. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.

(a) MOTION TO DISMISS.—In any action that is subject to this title, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 205(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 205(c), be considered to be a seller of the implant that allegedly caused harm to the claimant; or

(B)(i) the claimant has failed to establish, pursuant to section 205(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) MANUFACTURER OF IMPLANT SHALL BE NAMED A PARTY.—The claimant shall be required to name the manufacturer of the implant as a party to the action, unless—

(1) the manufacturer is subject to service of process solely in a jurisdiction in which the biomaterials supplier is not domiciled or subject to a service of process; or

(2) an action against the manufacturer is barred by applicable law.

(c) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with the Secretary pursuant to section 510(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 205(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 205(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted in connection to the action that is the subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted by the parties in accordance with this section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATUS OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 205 on the grounds that the defendant is not a manufacturer subject to such section 205(b) or seller subject to section 205(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 205(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 205(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion concerning contractual requirements and specifications, the court may deem the motion to dismiss to be a motion for summary judgment made pursuant to subsection (d).

(d) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 205(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection,

such discovery shall be limited solely to establishing whether a genuine issue of material fact exists.

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 205(d) or the failure to establish the applicable elements of section 205(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(e) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 205(b) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(f) MANUFACTURER CONDUCT OF PROCEEDING.—The manufacturer of an implant that is the subject of an action covered under this title shall be permitted to file and conduct a proceeding on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such proceeding or to conduct such proceeding.

(g) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier (or a manufacturer appearing in lieu of a supplier pursuant to subsection (f)) for attorney fees and costs, if—

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biomaterials supplier to be without merit and frivolous.

SEC. 207. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this Act, including any such action with respect to which the harm asserted in the action or the conduct that caused the harm occurred before the date of enactment of this Act.

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

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

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I would want to take this opportunity to first congratulate the majority of the Members of the Senate and Members on both sides of the aisle for by far the most significant step in legal reform which has been taken by the Senate in many, many years, perhaps in the memory of the most senior of the sitting Senators. This has been a project by members of the Commerce Committee which has lasted for a decade and a half. It also, I may say, after 2½ weeks of debate, has been one in which the views of the Members had an impact, had an impact in showing that a majority of the Senate, a bare majority, wants a broader legal reform package than is included in this bill, but that others worried about particular details were willing to work on those details, and to cast their votes accordingly. So I believe that the Senate has worked its will in a particularly fine fashion.

I want to pay particular tribute to my colleague, the Senator from West Virginia [Mr. ROCKEFELLER]. In many respects this has been a far more difficult task for him than it has been for me. I represent a broad coalition of views within my own political party with only a few having had differences. Senator ROCKEFELLER throughout this entire period of time has spoken for a significant number of Members of his colleagues but by no means a majority of them. But his dedication to the cause of this reform has been exemplary, and his persuasive ability with many of those colleagues has constantly left me in awe and with a great deal of inspiration. I believe that his persistence has paid off, and how wonderfully that it has done so.

I have gotten to know Tamera Stanton, his legislative director, and Ellen Doneski, his legislative assistant, very well during the course of this period of time and know how much they have contributed to his success, as has Trent Erickson, Lance Bultena, Jeanne Bumpus for me, and the majority leader's assistant, Kyle McSlarrow.

Other Senators have contributed significantly to this result, the chairman of the Commerce Committee, Senator PRESSLER, Senator COVERDELL, and Senators SNOWE and DEWINE who came up with the formula for punitive damages which appealed to the majority of Members of this body.

I only regret that Senator LIEBERMAN, the other principal cosponsor of this bill, through a family emergency is absent today. I know that he would like to have been in on the end of this. But his contributions are greatly appreciated. And he is one of the primary authors of the portion of this bill that deals with medical devices.

Now we go on to try to get a final proposal passed by the Congress and through the President of the United States.

The majority leader has been patient in allowing us 2½ weeks on this, and was an absolute key to its success as well.

With that, I think he wishes us to go on to another subject.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I too want to at this moment thank those who have been in the trenches over the years and, of course, most of all my distinguished colleague, the Senator from Alabama. It is always good to get in behind the chief justice because you know you are on the side of the law and of equity, and you know you are on the side of the judgment. Certainly it is, as we all revere him ethically, that you are on the side of ethics and equity.

I thank publicly Senator HEFLIN for his leadership, and particularly Winston Lett, a member of his staff. On my staff, Kevin Curtin, Jim Drewry, Moses Boyd, James Leventis, and Lloyd Ator. They have been working around the clock, Kevin and Moses and others have been working in sort of a minority position on this measure.

The record would show that my particular Commerce Committee has over the past several Congresses voted by a majority to report this bill. So we have had a sort of uphill fight. I still feel that, of course, we had the merit. I guess they feel they had the merit. But in any event, I think the 15-year holdup was because of that on our side. I also would like to thank Senator BIDEN's staff, the Senator himself, Sean Moylan, Karen Robb. And then with respect to, of course, the medical malpractice part, we did not have hearings but Health and Human Resources did. The distinguished former chairman, Senator KENNEDY, was the leader on that.

We had, of course, the vigorous help of Senator BOXER and Senator WELLSTONE. So it has been thoroughly aired and properly heard. The Senate has voted. But let us see what the House crowd comes up with in the contract.

I yield the floor.

Mr. HEFLIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I would like to congratulate Senator HOLLINGS for his outstanding work in regard to it, although we did not come out victorious. He is a great comrade in arms and has had a vast amount of experience on this matter. I suppose that looking back over the years, 15 or more years, he has fought these battles and I have been with him throughout, and he has tremendous knowledge in this area.

Originally, this bill was designed not to go to Judiciary. It was designed to go to Commerce. At that time, Senator HOLLINGS was not chairman. But obviously, it is a bill that deals with the judicial system. From the very beginning it was designed to avoid a careful scrutiny in regards its judicial impact. Fortunately, over the years, we had an individual who was an outstanding lawyer, and who had been an outstanding trial lawyer, Senator HOLLINGS in the State of South Carolina, and who has been there to deal with this matter.

I would also like to thank the staffs of Senator HOLLINGS and others who have been so important. They have really exhibited tremendous knowledge of the law. They have followed this legislation diligently and have done a tremendous job. Senator HOLLINGS has named them, and I will not repeat their names. But on my staff, Winston Lett and Jim Whiddon have worked tirelessly and diligently on this legislation, and I thank them for their great service in our legislative efforts.

I also want to congratulate Senator ROCKEFELLER and Senator GORTON for their advocacy in pushing forward on their bill. They just seem to have better allies than we did. I always at the end of a lawsuit, whether I won or lost, went over and congratulated my opposing counsel, and do so today. We will be having other battles as they come down the road, and sometimes we will be compatriots. We will be cosponsors and joint fighters in the same cause. Then, as it is with all Senators, we will be on opposite sides again in the future on some issue. But that is the way the Senate works; that is the way democracy works. During the debate on a great issue, you can disagree but you do not have to be disagreeable.

I think that Senator GORTON and Senator ROCKEFELLER never showed any disagreeable nature. I disagreed with them with respect to the cause the were advancing, but not in the manner they advanced it; they played fair and square. I want to thank them particularly for working out a settlement in regard to the unique and different situation as to Alabama's wrongful death statute.

We worked out a situation by which the amendment was adopted giving time to our State legislature or to our courts or to both to find a solution to be able to fit into this bill, if it is finally passed.

Then I want to say, while I will congratulate them, please do not take that as any indication that I have ceased to fight. I have not surrendered and will not give up in my efforts to maintain the traditional role of the 50 States in allowing them to fashion their own solutions to problems which may arise with regard to product liability laws. I believe the 10th amendment to the U.S. Constitution still has some meaning, and I will continue to assert the primacy of the States on these matters.

There are appeals. There are appeals to conference, there are appeals to the White House, there are appeals to the President to eliminate the unfairness of the bill or to see the death of this unfair bill. So we will continue to fight. The battle is not over. We have not surrendered, and we will continue to battle in the future because we feel we are battling for the injured parties, the consumers of America, and that we have right on our side. And we ask the Lord to give us a little more guidance in regard to these appeals as we move forward.

So I thank everybody concerned who has put up with me, and we will continue to battle on this issue as well as other issues that come up that affect the rights of the people.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. Mr. President, let me thank all of my colleagues for the fact we finished this bill. It has been 2 weeks and 2 days, but there were a couple of interruptions—the death of former Senator Stennis and other matters. So it was not solid. We probably did it in about 8 or 9 days.

We have had a lot of good debate on both sides. I congratulate all the principal players, Senators HEFLIN and HOLLINGS, also Senator ROCKEFELLER and Senator GORTON, who were on the winning side of this issue. I think they did a remarkable job in keeping a very fragile, narrow coalition together. We broadened the bill with narrow margins. I think we knew at the time those provisions would not be in the bill or we could not obtain the 60 votes we needed for cloture, so adjustments were made. But at least we made a record on medical malpractice, on punitive damages, and on other issues that we believe are very important and we believe will be back before the Senate.

I also wish to thank Senator COVERDELL for his work with outside groups as sort of the coordinator, and my colleague, Senator LOTT of Mississippi, the majority whip, who did an excellent job, along with his staff and members of my staff and others because we had some very difficult votes.

I think we have had a dramatic step forward. The product liability bill has been introduced in every Congress for the last decade. In most cases, however, we could not even muster the votes to consider the legislation. We could not get the 60 votes to even talk about it because we had strong opposition and we had a lot of what we thought were distortions. The other side would say not.

So I think passage today is an important victory for common sense and the American people. It is also important to note that we have just passed a bill that was stronger than bills introduced in previous years, stronger because of the efforts of some of our Members in the Chamber that added small business protections.

I wish to pay tribute to our newest Members, who as a group provided energy, ideas, and determination in this debate. Senators SNOWE and DEWINE made a significant contribution that allowed us to obtain meaningful protection from abusive punitive damages while protecting small businesses.

Senators ABRAHAM and KYL responded to the call of the American people in last year's elections by their efforts to expand these protections to include volunteer and charitable organizations and to add needed civil justice reforms. Together with Senators KASSEBAUM and MCCONNELL, who introduced medical malpractice reforms, they produced something never before seen on the Senate floor—clearer majorities for broader reform. For various reasons, we could not get the 60 votes to bring debate to a close on these broader reforms, but we have had the opportunity and I think it is certainly important.

Just 3 days ago, I received a letter from the head of the Boy Scouts of America, Mr. Jere Ratcliffe. In just the second line of his letter, Mr. Ratcliffe says something that ought to cause all of us to pause. I quote:

> The civil justice system, as it now exists, has consequences which worked a chilling effect on our willingness and ability to continue to pursue activities that are beneficial to all of us. . . . This is particularly so in the case of volunteer service organizations.

That is what he believes. That is what many of us believe. So we have heard from the trial lawyers. They say everything is fine, but the volunteer organizations tell us a different story.

I would just say that we hope to bring up sometime later this year or, if not, next year the McConnell-Lieberman-Kassebaum health care liability bill—hopefully, later this year. The amendment was added by a 53 to 47 vote. In addition, some Senators support medical malpractice reform but voted against that amendment last week because they wanted to pursue only a product liability bill. So we are going to revisit that later in the year. We have a lot of work to do. I do not know how late it is going to be. But in any event, we will be taking a hard look at that legislation, hopefully this year; if not, early next year.

So, again, I thank the managers, Senator GORTON and Senator ROCKEFELLER. This is a bipartisan effort, as are most things in the Senate because without a bipartisan effort, you cannot get the 60 votes to shut off debate and pass the bill. That is the way it works. Some people may not totally understand it, may disagree with it, but that is the way it works. So now we move to another legislative matter, which I would ask the Chair to report.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The PRESIDING OFFICER. Under the previous order, the hour of noon having arrived, the Senate will now proceed to the consideration of S. 534, which the clerk will now report.

The legislative clerk read as follows:

> A bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste and for other purposes.

The Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Interstate Transportation of Municipal Solid Waste Act of 1995".

TITLE I—INTERSTATE WASTE

SEC. 101. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is

99-059 O—97 Vol. 141 (Pt. 9) 15

amended by adding at the end the following new section:

"SEC. 4011. INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE.

"(a) AUTHORITY TO RESTRICT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) Except as provided in paragraph (4), immediately upon the date of enactment of this section if requested in writing by an affected local government, a Governor may prohibit the disposal of out-of-State municipal solid waste in any landfill or incinerator that is not covered by the exceptions provided in subsection (b) and that is subject to the jurisdiction of the Governor and the affected local government.

"(2) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(D) and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may limit the quantity of out-of-State municipal solid waste received for disposal at each landfill or incinerator covered by the exceptions provided in subsection (b) that is subject to the jurisdiction of the Governor, to an annual amount equal to or greater than the quantity of out-of-State municipal solid waste received for disposal at such landfill or incinerator during calendar year 1993.

"(3)(A) Except as provided in paragraph (4), immediately upon the date of publication of the list required in paragraph (6)(E), and notwithstanding the absence of a request in writing by the affected local government, a Governor, in accordance with paragraph (5), may prohibit or limit the amount of out-of-State municipal solid waste disposed of at any landfill or incinerator covered by the exceptions in subsection (b) that is subject to the jurisdiction of the Governor, generated in any State that is determined by the Administrator under paragraph (6)(E) as having exported, to landfills or incinerators not covered by host community agreements or permits authorizing receipt of out-of-State municipal solid waste, more than—

"(i) 3,500,000 tons of municipal solid waste in calendar year 1996;

"(ii) 3,000,000 tons of municipal solid waste in each of calendar years 1997 and 1998;

"(iii) 2,500,000 tons of municipal solid waste in each of calendar years 1999 and 2000;

"(iv) 1,500,000 tons of municipal solid waste in each of calendar years 2001 and 2002; and

"(v) 1,000,000 tons of municipal solid waste in calendar year 2003 and each year thereafter.

"(B)(i) No State may export to landfills or incinerators in any 1 State that are not covered by host community agreements more than the following amounts of municipal solid waste:

"(I) In calendar year 1996, the greater of 1,400,000 tons or 90 percent of the amount exported to the State in calendar year 1993.

"(II) In calendar year 1997, the greater of 1,300,000 tons or 90 percent of the amount exported to the State in calendar year 1996.

"(III) In calendar year 1998, the greater of 1,200,000 tons or 90 percent of the amount exported to the State in calendar year 1997.

"(IV) In calendar year 1999, the greater of 1,100,000 tons or 90 percent of the amount exported to the State in calendar year 1998.

"(V) In calendar year 2000, 1,000,000 tons.

"(VI) In calendar year 2001, 800,000 tons.

"(VII) In calendar year 2002 or any calendar year thereafter, 600,000 tons.

"(ii) The Governor of an importing State may take action to restrict levels of imports to reflect the appropriate level of out-of-State municipal solid waste imports if—

"(I) the Governor of the importing State has notified the Governor of the exporting State and the Administrator, 12 months prior to taking any such action, of the importing State's intention to impose the requirements of this section;

"(II) the Governor of the importing State has notified the Governor of the exporting State and the Administrator of the violation by the exporting State of this section at least 90 days prior to taking any such action; and

"(III) the restrictions imposed by the Governor of the importing State are uniform at all facilities.

"(C) The authority provided by subparagraphs (A) and (B) shall apply for as long as a State exceeds the permissible levels as determined by the Administrator under paragraph (6)(E).

"(4)(A) A Governor may not exercise the authority granted under this section if such action would result in the violation of, or would otherwise be inconsistent with, the terms of a host community agreement or a permit issued from the State to receive out-of-State municipal solid waste.

"(B) Except as provided in paragraph (3), a Governor may not exercise the authority granted under this section in a manner that would require any owner or operator of a landfill or incinerator covered by the exceptions provided in subsection (b) to reduce the amount of out-of-State municipal solid waste received from any State for disposal at such landfill or incinerator to an annual quantity less than the amount received from such State for disposal at such landfill or incinerator during calendar year 1993.

"(5) Any limitation imposed by a Governor under paragraph (2) or (3)—

"(A) shall be applicable throughout the State;

"(B) shall not directly or indirectly discriminate against any particular landfill or incinerator within the State; and

"(C) shall not directly or indirectly discriminate against any shipments of out-of-State municipal solid waste on the basis of place of origin and all such limitations shall be applied to all States in violation of paragraph (3).

"(6) ANNUAL STATE REPORT.—

"(A) IN GENERAL.—Within 90 days after enactment of this section and on April 1 of each year thereafter the owner or operator of each landfill or incinerator receiving out-of-State municipal solid waste shall submit to the affected local government and to the Governor of the State in which the landfill or incinerator is located, information specifying the amount and State of origin of out-of-State municipal solid waste received for disposal during the preceding calendar year. Within 120 days after enactment of this section and on July 1 of each year thereafter each State shall publish and make available to the Administrator, the Governor of the State of origin and the public, a report containing information on the amount of out-of-State municipal solid waste received for disposal in the State during the preceding calendar year.

"(B) CONTENTS.—Each submission referred to in this section shall be such as would result in criminal penalties in case of false or misleading information. Such information shall include the amount of waste received, the State of origin, the identity of the generator, the date of the shipment, and the type of out-of-State municipal solid waste.

"(C) LIST.—The Administrator shall publish a list of States that the Administrator has determined have exported out-of-State in any of the following calendar years an amount of municipal solid waste in excess of—

"(i) 3,500,000 tons in 1996;

"(ii) 3,000,000 tons in 1997;

"(iii) 3,000,000 tons in 1998;

"(iv) 2,500,000 tons in 1999;

"(v) 2,500,000 tons in 2000;

"(vi) 1,500,000 tons in 2001;

"(vii) 1,500,000 tons in 2002;

"(viii) 1,000,000 tons in 2003; and

"(ix) 1,000,000 tons in each calendar year after 2003.

The list for any calendar year shall be published by June 1 of the following calendar year.

"(D) SAVINGS PROVISION.—Nothing in this subsection shall be construed to preempt any State requirement that requires more frequent reporting of information.

"(7) Any affected local government that intends to submit a request under paragraph (1) or take formal action to enter into a host community agreement after the date of enactment of this subsection shall, prior to taking such action—

"(A) notify the Governor, contiguous local governments, and any contiguous Indian tribes;

"(B) publish notice of the action in a newspaper of general circulation at least 30 days before taking such action;

"(C) provide an opportunity for public comment; and

"(D) following notice and comment, take formal action on any proposed request or action at a public meeting.

"(8) Any owner or operator seeking a host community agreement after the date of enactment of this subsection shall provide to the affected local government the following information, which shall be made available to the public from the affected local government:

"(A) A brief description of the planned facility, including a description of the facility size, ultimate waste capacity, and anticipated monthly and yearly waste quantities to be handled.

"(B) A map of the facility site that indicates the location of the facility in relation to the local road system and topographical and hydrological features and any buffer zones and facility units to be acquired by the owner or operator of the facility.

"(C) A description of the existing environmental conditions at the site, and any violations of applicable laws or regulations.

"(D) A description of environmental controls to be utilized at the facility.

"(E) A description of the site access controls to be employed, and roadway improvements to be made, by the owner or operator, and an estimate of the timing and extent of increased local truck traffic.

"(F) A list of all required Federal, State, and local permits.

"(G) Any information that is required by State or Federal law to be provided with respect to any violations of environmental laws (including regulations) by the owner and operator, the disposition of enforcement proceedings taken with respect to the violations, and corrective measures taken as a result of the proceedings.

"(H) Any information that is required by State or Federal law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

"(b) EXCEPTIONS TO AUTHORITY TO PROHIBIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) The authority to prohibit the disposal of out-of-State municipal solid waste provided under subsection (a)(1) shall not apply to

landfills and incinerators in operation on the date of enactment of this section that—

"(A) received during calendar year 1993 documented shipments of out-of-State municipal solid waste; and

"(B)(i) in the case of landfills, are in compliance with all applicable Federal and State laws and regulations relating to operation, design and location standards, leachate collection, ground water monitoring, and financial assurance for closure and post-closure and corrective action; or

"(ii) in the case of incinerators, are in compliance with the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429) and applicable State laws and regulations relating to facility design and operations.

"(2) A Governor may not prohibit the disposal of out-of-State municipal solid waste pursuant to subsection (a)(1) at facilities described in this subsection that are not in compliance with applicable Federal and State laws and regulations unless disposal of municipal solid waste generated within the State at such facilities is also prohibited.

"(c) ADDITIONAL AUTHORITY TO LIMIT OUT-OF-STATE MUNICIPAL SOLID WASTE.—(1) In any case in which an affected local government is considering entering into, or has entered into, a host community agreement and the disposal or incineration of out-of-State municipal solid waste under such agreement would preclude the use of municipal solid waste management capacity described in paragraph (2), the Governor of the State in which the affected local government is located may prohibit the execution of such host community agreement with respect to that capacity.

"(2) The municipal solid waste management capacity referred to in paragraph (1) is that capacity—

"(A) that is permitted under Federal or State law;

"(B) that is identified under the State plan; and

"(C) for which a legally binding commitment between the owner or operator and another party has been made for its use for disposal or incineration of municipal solid waste generated within the region (identified under section 4006(a)) in which the local government is located.

"(d) COST RECOVERY SURCHARGE.—

"(1) AUTHORITY.—A State described in paragraph (2) may adopt a law and impose and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

"(2) APPLICABILITY.—The authority to impose a cost recovery surcharge under this subsection applies to any State that on or before April 3, 1994, imposed and collected a special fee on the processing or disposal of out-of-State municipal solid waste pursuant to a State law.

"(3) LIMITATION.—No such State may impose or collect a cost recovery surcharge from a facility on any out-of-State municipal solid waste that is being received at the facility under 1 or more contracts entered into after April 3, 1994, and before the date of enactment of this section.

"(4) AMOUNT OF SURCHARGE.—The amount of the cost recovery surcharge may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (6) and in no event may exceed $1.00 per ton of waste.

"(5) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State covered by this subsection shall be used to fund those solid waste management programs administered by the State or its political subdivision that incur costs for which the surcharge is collected.

"(6) CONDITIONS.—(A) Subject to subparagraphs (B) and (C), a State covered by this subsection may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

"(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

"(ii) the surcharge is based on those costs to the State demonstrated under clause (i) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

"(iii) the surcharge is compensatory and is not discriminatory.

"(B) In no event shall a cost recovery surcharge be imposed by a State to the extent that the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax assessed against or voluntarily paid to the State or its political subdivision in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

"(C) The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A)(iii).

"(7) DEFINITIONS.—As used in this subsection:

"(A) The term 'costs' means the costs incurred by the State for the implementation of its laws governing the processing or disposal of municipal solid waste, limited to the issuance of new permits and renewal of or modification of permits, inspection and compliance monitoring, enforcement, and costs associated with technical assistance, data management, and collection of fees.

"(B) The term 'processing' means any activity to reduce the volume of solid waste or alter its chemical, biological or physical state, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

"(e) SAVINGS CLAUSE.—Nothing in this section shall be interpreted or construed—

"(1) to have any effect on State law relating to contracts; or

"(2) to affect the authority of any State or local government to protect public health and the environment through laws, regulations, and permits, including the authority to limit the total amount of municipal solid waste that landfill or incinerator owners or operators within the jurisdiction of a State may accept during a prescribed period, provided that such limitations do not discriminate between in-State and out-of-State municipal solid waste, except to the extent authorized by this section.

"(f) DEFINITIONS.—As used in this section:

"(1)(A) The term 'affected local government', used with respect to a landfill or incinerator, means—

"(i) the public body created by State law with responsibility to plan for municipal solid waste management, a majority of the members of which are elected officials, for the area in which the facility is located or proposed to be located; or

"(ii) the elected officials of the city, town, township, borough, county, or parish exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or is proposed to be located.

"(B)(i) Within 90 days after the date of enactment of this section, a Governor may designate and publish notice of which entity listed in clause (i) or (ii) of subparagraph (A) shall serve as the affected local government for actions taken under this section and after publication of such notice.

"(ii) If a Governor fails to make and publish notice of such a designation, the affected local government shall be the elected officials of the city, town, township, borough, county, parish, or other public body created pursuant to State law with primary jurisdiction over the land or the use of land on which the facility is located or is proposed to be located.

"(C) For purposes of host community agreements entered into before the date of publication of the notice, the term means either a public body described in subparagraph (A)(i) or the elected officials of any of the public bodies described in subparagraph (A)(ii).

"(2) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding document or documents executed by duly authorized officials of the affected local government that specifically authorizes a landfill or incinerator to receive municipal solid waste generated out of State, but does not include any agreement to pay host community fees for receipt of waste unless additional express authorization to receive out-of-State waste is also included.

"(3) The term 'out-of-State municipal solid waste' means, with respect to any State, municipal solid waste generated outside of the State. To the extent that the President determines it is consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade, the term shall include municipal solid waste generated outside of the United States.

"(4) The term 'municipal solid waste' means refuse (and refuse-derived fuel) generated by the general public or from a residential, commercial, institutional, or industrial source (or any combination thereof), consisting of paper, wood, yard wastes, plastics, leather, rubber, or other combustible or noncombustible materials such as metal or glass (or any combination thereof). The term 'municipal solid waste' does not include—

"(A) any solid waste identified or listed as a hazardous waste under section 3001;

"(B) any solid waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604 or 9606) or a corrective action taken under this Act;

"(C) any metal, pipe, glass, plastic, paper, textile, or other material that has been separated or diverted from municipal solid waste (as otherwise defined in this paragraph) and has been transported into a State for the purpose of recycling or reclamation;

"(D) any solid waste that is—

"(i) generated by an industrial facility; and

"(ii) transported for the purpose of treatment, storage, or disposal to a facility that is owned or operated by the generator of the waste, or is located on property owned by the generator of the waste, or is located on property owned by a company with which the generator is affiliated;

"(E) any solid waste generated incident to the provision of service in interstate, intrastate, foreign, or overseas air transportation;

"(F) any industrial waste that is not identical to municipal solid waste (as otherwise defined in this paragraph) with respect to

the physical and chemical state of the industrial waste, and composition, including construction and demolition debris;

"(G) any medical waste that is segregated from or not mixed with municipal solid waste (as otherwise defined in this paragraph); or

"(H) any material or product returned from a dispenser or distributor to the manufacturer for credit, evaluation, or possible reuse.

"(5) The term 'compliance' means a pattern or practice of adhering to and satisfying standards and requirements promulgated by the Federal or a State government for the purpose of preventing significant harm to human health and the environment. Actions undertaken in accordance with compliance schedules for remediation established by Federal or State enforcement authorities shall be considered compliance for purposes of this section.

"(6) The terms 'specifically authorized' and 'specifically authorizes' refer to an explicit authorization, contained in a host community agreement or permit, to import waste from outside the State. Such authorization may include a reference to a fixed radius surrounding the landfill or incinerator that includes an area outside the State or a reference to any place of origin, reference to specific places outside the State, or use of such phrases as 'regardless of origin' or 'outside the State'. The language for such authorization may vary as long as it clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from sources outside the State.".

(b) TABLE OF CONTENTS AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding at the end of the items relating to subtitle D the following new item:

"Sec. 4011. Interstate transportation of municipal solid waste.".

TITLE II—FLOW CONTROL

SEC. 201. SHORT TITLE.

This title may be cited as the "Municipal Solid Waste Flow Control Act of 1995".

SEC. 202. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.), as amended by section 101, is amended by adding after section 4011 the following new section:

"SEC. 4012. STATE AND LOCAL GOVERNMENT CONTROL OF MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIAL.

"(a) DEFINITIONS.—In this section:

"(1) DESIGNATE; DESIGNATION.—The terms 'designate' and 'designation' refer to an authorization by a State or political subdivision, and the act of a State or political subdivision in requiring or contractually committing, that all or any portion of the municipal solid waste or recyclable material that is generated within the boundaries of the State or political subdivision be delivered to waste management facilities or facilities for recyclable material or a public service authority identified by the State or political subdivision.

"(2) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the authority to control the movement of municipal solid waste or voluntarily relinquished recyclable material and direct such solid waste or voluntarily relinquished recyclable material to a designated waste management facility or facility for recyclable material.

"(3) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' means—

"(A) solid waste generated by the general public or from a residential, commercial, institutional, or industrial source, consisting of paper, wood, yard waste, plastics, leather, rubber, and other combustible material and noncombustible material such as metal and glass, including residue remaining after recyclable material has been separated from waste destined for disposal, and including waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); but

"(B) does not include—

"(i) waste identified or listed as a hazardous waste under section 3001 of this Act or waste regulated under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);

"(ii) waste, including contaminated soil and debris, resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604, 9606) or any corrective action taken under this Act;

"(iii) medical waste listed in section 11002;

"(iv) industrial waste generated by manufacturing or industrial processes, including waste generated during scrap processing and scrap recycling;

"(v) recyclable material; or

"(vi) sludge.

"(4) PUBLIC SERVICE AUTHORITY.—The term 'public service authority' means—

"(A) an authority or authorities created pursuant to State legislation to provide individually or in combination solid waste management services to political subdivisions; or

"(B) an authority that was issued a certificate of incorporation by a State corporation commission established by a State constitution.

"(5) RECYCLABLE MATERIAL.—The term 'recyclable material' means material that has been separated from waste otherwise destined for disposal (at the source of the waste or at a processing facility) or has been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic material such as food and yard waste, or reuse (other than for the purpose of incineration).

"(6) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means a facility that collects, separates, stores, transports, transfers, treats, processes, combusts, or disposes of municipal solid waste.

"(b) AUTHORITY.—

"(1) IN GENERAL.—Each State and each political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction by directing the municipal solid waste or recyclable material to a waste management facility or facility for recyclable material, if such flow control authority—

"(A) is imposed pursuant to a law, ordinance, regulation, or other legally binding provision of the State or political subdivision in effect on May 15, 1994; and

"(B) has been implemented by designating before May 15, 1994, the particular waste management facilities or public service authority to which the municipal solid waste or recyclable material is to be delivered, the substantial construction of which facilities was performed after the effective date of that law, ordinance, regulation, or other legally binding provision and which facilities were in operation as of May 15, 1994.

"(2) LIMITATION.—The authority of this section extends only to the specific classes or categories of municipal solid waste to which flow control authority requiring a movement to a waste management facility was actually applied on or before May 15, 1994 (or, in the case of a State or political subdivision that qualifies under subsection (c), to the specific classes or categories of municipal solid waste for which the State or political subdivision prior to May 15, 1994, had committed to the designation of a waste management facility).

"(3) LACK OF CLEAR IDENTIFICATION.—With regard to facilities granted flow control authority under subsection (c), if the specific classes or categories of municipal solid waste are not clearly identified, the authority of this section shall apply only to municipal solid waste generated by households.

"(4) DURATION OF AUTHORITY.—With respect to each designated waste management facility, the authority of this section shall be effective until the later of—

"(A) the end of the remaining life of a contract between the State or political subdivision and any other person regarding the movement or delivery of municipal solid waste or voluntarily relinquished recyclable material to a designated facility (as in effect May 15, 1994);

"(B) completion of the schedule for payment of the capital costs of the facility concerned (as in effect May 15, 1994); or

"(C) the end of the remaining useful life of the original facility, as that remaining life may be extended by—

"(i) retrofitting of equipment or the making of other significant modifications to meet applicable environmental requirements or safety requirements;

"(ii) routine repair or scheduled replacement of equipment or components that does not add to the capacity of a waste management facility; or

"(iii) expansion of the facility on land that is—

"(I) legally or equitably owned, or under option to purchase or lease, by the owner or operator of the facility; and

"(II) covered by the permit for the facility (as in effect May 15, 1994).

"(5) ADDITIONAL AUTHORITY.—Notwithstanding anything to the contrary in this section, but subject to subsection (j), a State or political subdivision of a State that, on or before January 1, 1984, adopted regulations under State law that required or directed the transportation, management, or disposal of solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities and applied those regulations to every political subdivision of the State may—

"(A) designate any waste management facility in the State that—

"(i) was designated prior to May 15, 1994, and meets the requirements of subsection (c); or

"(ii) meets the requirements of paragraph (1); and

"(B) continue to exercise flow control authority for the remaining useful life of that facility over all classes and categories of solid waste that were subject to flow control on May 15, 1994.

"(c) COMMITMENT TO CONSTRUCTION.—

"(1) IN GENERAL.—Notwithstanding subsection (b)(1) (A) and (B), any political subdivision of a State may exercise flow control authority under subsection (b), if—

"(A) the law, ordinance, regulation, or other legally binding provision specifically provides for flow control authority for municipal solid waste generated within its

boundaries and was in effect prior to May 15, 1994; and

"(B) prior to May 15, 1994, the political subdivision committed to the designation of a waste management facility to which municipal solid waste is to be transported or at which municipal solid waste is to be disposed of under that law, ordinance, regulation, plan, or legally binding provision.

"(2) FACTORS DEMONSTRATING COMMITMENT.—A commitment to the designation of a waste management facility is demonstrated by 1 or more of the following factors:

"(A) CONSTRUCTION PERMITS.—All permits required for the substantial construction of the facility were obtained prior to May 15, 1994.

"(B) CONTRACTS.—All contracts for the substantial construction of the facility were in effect prior to May 15, 1994.

"(C) REVENUE BONDS.—Prior to May 15, 1994, revenue bonds were presented for sale to specifically provide revenue for the construction of the facility.

"(D) CONSTRUCTION AND OPERATING PERMITS.—The State or political subdivision submitted to the appropriate regulatory agency or agencies, on or before May 15, 1994, substantially complete permit applications for the construction and operation of the facility.

"(d) CONSTRUCTED AND OPERATED.—

"(1) IN GENERAL.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if—

"(A) prior to May 15, 1994, the political subdivision—

"(i) contracted with a public service authority or with its operator to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or is within or under the control of the political subdivision, in order to support revenue bonds issued by and in the name of the public service authority for waste management facilities; or

"(ii) entered into contracts with a public service authority to deliver or cause to be delivered to the public service authority substantially all of the disposable municipal solid waste that is generated or collected by or within the control of the political subdivision, which imposed flow control pursuant to a law, ordinance, regulation, or other legally binding provision and where outstanding revenue bonds were issued in the name of public service authorities for waste management facilities; and

"(B) prior to May 15, 1994, the public service authority—

"(i) issued the revenue bonds for the construction of municipal solid waste facilities to which the political subdivision's municipal solid waste is transferred or disposed; and

"(ii) commenced operation of the facilities.

"(2) DURATION OF AUTHORITY.—Authority under this subsection may be exercised by a political subdivision qualifying under paragraph (1)(A)(ii) only until the expiration of the contract or the life of the bond, whichever is earlier.

"(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

"(1) was mandated by State law to provide for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the county;

"(2) is currently required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

"(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through a law, ordinance, regulation, contract, or other legally binding provision; and

"(4) had incurred significant financial expenditures to comply with the mandates under State law and to repay outstanding revenue bonds that were issued for the construction of solid waste management facilities to which the political subdivision's waste was designated.

"(f) RETAINED AUTHORITY.—

"(1) REQUEST.—On the request of a generator of municipal solid waste affected by this section, a State or political subdivision may authorize the diversion of all or a portion of the solid waste generated by the generator making the request to an alternative solid waste treatment or disposal facility, if the purpose of the request is to provide a higher level of protection for human health and the environment or reduce potential future liability of the generator under Federal or State law for the management of such waste, unless the State or political subdivision determines that the facility to which the municipal solid waste is proposed to be diverted does not provide a higher level of protection for human health and the environment or does not reduce the potential future liability of the generator under Federal or State law for the management of such waste.

"(2) CONTENTS.—A request under paragraph (1) shall include information on the environmental suitability of the proposed alternative treatment or disposal facility and method, compared to that of the designated facility and method.

"(g) LIMITATIONS ON REVENUE.—A State or political subdivision may exercise flow control authority under subsection (b), (c), or (d) only if the State or political subdivision certifies that the use of any of its revenues derived from the exercise of that authority will be used for solid waste management services.

"(h) REASONABLE REGULATION OF COMMERCE.—A law, ordinance, regulation, or other legally binding provision or official act of a State or political subdivision, as described in subsection (b), (c), or (d), that implements flow control authority in compliance with this section shall be considered to be a reasonable regulation of commerce retroactive to its date of enactment or effective date and shall not be considered to be an undue burden on or otherwise considered as impairing, restraining, or discriminating against interstate commerce.

"(i) EFFECT ON EXISTING LAWS AND CONTRACTS.—

"(1) ENVIRONMENTAL LAWS.—Nothing in this section shall be construed to have any effect on any other law relating to the protection of human health and the environment or the management of municipal solid waste or recyclable material.

"(2) STATE LAW.—Nothing in this section shall be construed to authorize a political subdivision of a State to exercise the flow control authority granted by this section in a manner that is inconsistent with State law.

"(3) OWNERSHIP OF RECYCLABLE MATERIAL.—Nothing in this section—

"(A) authorizes a State or political subdivision of a State to require a generator or owner of recyclable material to transfer recyclable material to the State or political subdivision; or

"(B) prohibits a generator or owner of recyclable material from selling, purchasing, accepting, conveying, or transporting recyclable material for the purpose of transformation or remanufacture into usable or marketable material, unless the generator or owner voluntarily made the recyclable material available to the State or political subdivision and relinquished any right to, or ownership of, the recyclable material.

"(j) REPEAL.—(1) Notwithstanding any provision of this title, authority to flow control by directing municipal solid waste or recyclable materials to a waste management facility shall terminate on the date that is 30 years after the date of enactment of this Act.

"(2) This section and the item relating to this section in the table of contents for subtitle D of the Solid Waste Disposal Act are repealed effective as of the date that is 30 years after the date of enactment of this Act.".

SEC. 203. TABLE OF CONTENTS AMENDMENT.

The table of contents for subtitle D in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901), as amended by section 101(b), is amended by adding after the item relating to section 4011 the following new item:

"Sec. 4012. State and local government control of movement of municipal solid waste and recyclable material.".

TITLE III—GROUND WATER MONITORING

SEC. 301. GROUND WATER MONITORING.

(a) AMENDMENT OF SOLID WASTE DISPOSAL ACT.—Section 4010(c) of the Solid Waste Disposal Act (42 U.S.C. 6949a(c)) is amended—

(1) by striking "CRITERIA.—Not later" and inserting the following: "CRITERIA.—

"(1) IN GENERAL.—Not later"; and

(2) by adding at the end the following new paragraph:

"(2) ADDITIONAL REVISIONS.—Subject to paragraph (2), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

"(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

"(B) the municipal solid waste landfill unit or expansion serves—

"(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

"(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

"(3) PROTECTION OF GROUND WATER RESOURCES.—

"(A) MONITORING REQUIREMENT.—A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

"(B) METHODS.—If a State requires ground water monitoring of a solid waste landfill

unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

"(C) CORRECTIVE ACTION.—If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

"(4) REMOTE ALASKA NATIVE VILLAGES.—Upon certification by the Governor of the State of Alaska that application of the requirements of the criteria described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) would be infeasible, would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the unit shall be exempt from those requirements.".

(b) REINSTATEMENT OF REGULATORY EXEMPTION.—It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as added by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.

Mr. DOLE. Mr. President, I understand the distinguished Democratic leader wants to speak for a few moments on product liability, and so he will be here momentarily. But I would say, as we start S. 534, keep in mind it came out of the committee by a vote of 16 to 0. And I hope this is something we can complete before the week is out, sometime by late Friday afternoon. I know there are amendments. We can dispose of amendments. But I hope that in many cases the amendments can be resolved by agreement, by working them out. And I know we have reasonable managers on both sides of the aisle.

This is important legislation, and I am happy to have it before the Senate. I hope we can complete action on it before the week is out because next week we will go to the budget and, hopefully, following that to telecommunications. So we have our next 2 or 3 weeks laid out for us before a very brief Memorial Day recess.

I will also be sending a letter to Senator DASCHLE today with reference to the August recess, and unless we can reach some accommodation, I then will announce in the next week whether or not there will be an August recess and, if so, the length of that recess.

Mr. CHAFEE. I wonder if the leader would yield to a question.

I heard the ominous words "a very brief Memorial Day recess." What does that mean?

Mr. DOLE. It is a week.

Mr. CHAFEE. That is fine.

Mr. DOLE. It may be longer than the August recess.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

THE PRODUCT LIABILITY BILL

Mr. DASCHLE. Mr. President, I want to commend so many Senators on both sides of the aisle for their efforts over the last couple of weeks on product liability. This has been a vigorous debate, and a debate that obviously has required a good deal of compromise and concession on both sides.

I believe there was another opportunity that we could have had to reach greater consensus on the bill, and I am sorry we missed that opportunity in the final days of this debate.

But I do believe that as a result of the decisions made by this body over the last couple of weeks, the message ought to be very clear. The message is this: Members of the Senate are not willing to accept the extreme measures that have been proposed by the House. If those more extreme measures are added to the bill in conference, it is very unlikely that anything will ultimately pass.

It is critical, as we look to the conference report, that we keep this bill modest, that we not load it up with expansionist amendments, that we seek to ensure that what has been passed is all that comes back to the Senate.

I will say unequivocally that I believe this legislation will again be in trouble if it comes back vastly different from what it is right now. Many of us felt very strongly we could have improved upon this bill, especially with regard to punitive limits and with regard to the limitations on joint and several liability. For many of us who opposed the bill, there were provisions that we supported and would have liked to have been able to vote for, but, unfortunately, we could not resolve the issues that, in our view, were still too onerous to support.

But let me say, in spite of the fact that there was a very strong vote, that vote is directly dependent upon the degree to which the more extreme measures that were initially added are kept off the bill. We do not want to see them when this comes back. We will continue to fight this in a consequential way if they do come back, and I hope that that message was loud and clear.

I was very pleased with the comments made by both Senators ROCKEFELLER and GORTON yesterday as they commented about what they expect to see in conference. Senator GORTON said that he does not think there is one semicolon that is negotiable, and I think that is an accurate reflection of where the Senate stands.

So, indeed, we passed a piece of legislation today that may reflect the views of three-fifths of the Senate, but I think that it is a very tenuous victory, depending upon what may or may not occur in the conference report. So we look to that at some point in the future. But I must say that while those on both sides of the aisle who supported the legislation can claim victory, I think it is also important that they appreciate how tenuous that victory is and how important it is that we come back to the floor with something meaningful, something narrow and focused, and something that directly addresses the concerns raised on this floor for the last 2 weeks.

With that, I yield the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

SIXTY VOTES NEEDED ON CONTROVERSIAL ISSUES

Mr. CHAFEE. Mr. President, I would also say to the distinguished Democratic leader, it appears around here if there is anything controversial now, you need 60 votes to get it passed. Not a 51 vote margin, 51 to 49, it has to be 60 votes if the legislation is controversial; something new in the life of the Senate, but not entirely new, I will say that.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. CHAFEE. Mr. President, I call up S. 534.

The PRESIDING OFFICER. It is the pending business.

Mr. CHAFEE. Mr. President, I join with the Senator from New Hampshire, Senator SMITH, in presenting S. 534 to the Senate. This is legislation dealing with interstate waste and flow control authority.

I want to acknowledge Senator SMITH's efforts as chairman of the Environment and Public Works Committee's Subcommittee on Superfund, Waste Control, and Risk Assessment. Senator SMITH has taken the lead in drafting this legislation, targeting issues that went unresolved last year.

I also want to acknowledge the work of the distinguished ranking member of our committee, Senator BAUCUS, for his help in the framing of this legislation which we will now be discussing over the next day or so.

Mr. President, this legislation is straightforward and attempts to deal with the issues of interstate waste and flow control, balancing the interests of the States that import waste, trash that comes into States for disposal, and the exporters, States that do not have landfills or incinerators and thus ship it out. We try to deal with communities with outstanding revenue bonds as they deal with the issues of construction of waste facilities the local individual who dispose of his or her garbage.

This bill includes three titles. Title I deals with interstate waste and is similar to the bill approved by the Senate

last year. I would like to stress that. The interstate waste portion is one that was approved unanimously by this Senate last year.

Title II focuses on flow control, which we will discuss in a few minutes. And title III reinstates the ground water monitoring exemption for small landfills in the municipal solid waste landfill criteria.

Let me turn to title I. This is a very contentious area. Indeed, I guess we have dealt with this, on and off, over the past 5 years. And no one has been more ardent in trying to get this problem solved than the distinguished Senator from Indiana, Senator COATS.

Now, on interstate shipments, the bill before us, as I say, is similar to S. 2345, which was approved unanimously last year by the Senate.

I want to make it clear that the bill before us deals exclusively with the transport, across State borders, of municipal solid waste. That is what we are talking about. We are not talking about restrictions on hazardous waste or industrial waste or even construction and demolition debris. Those items involve an entirely different set of problems and would require different approaches than we are dealing with here.

We are dealing here with municipal solid waste, sometimes referred to as MSW; what the rest of us, in layman's terms, would call garbage or trash.

Specifically the bill provides the following. There is an import ban. A Governor may, if requested by the affected local community, as designated by the Governor, ban out-of-State municipal solid waste at landfills or incinerators that did not receive out-of-State waste in 1993.

Now, this gets a little bit complicated, but these are provisions that we have worked out with Governors and municipalities, particularly the ones that cross borders.

So the first point is there can be an import ban that the Governor can impose, if he is requested by a local community and if that community did not receive out-of-State waste in 1993. Or he can impose this same ban at those facilities that received municipal solid waste in 1993 but are not in compliance with applicable Federal or State standards. So there is a power in the Governor. Now that is an import ban.

Further, a Governor may unilaterally freeze out-of-State waste at 1993 levels at landfills and incinerators that received waste during 1993 and are in compliance. In other words, the Governor can put a clamp on limiting it to the amount that came in in 1993, at those levels.

Now, there is an export ratchet, likewise. A Governor may unilaterally ban out-of-State waste from any State exporting more than 3.5 million tons in 1996. This declines to 3 million tons in 1997 and 1998, drops to 2.5 million tons in 1999 and the year 2000, 1.5 million tons in the year 2001 and 2002, and 1 million tons in 2003 and every year thereafter. So the Governor has this power to ban out-of-State waste coming from a State that is exporting very substantial amounts. That is the power in the importing State Governor.

There is also another ratchet. A Governor may unilaterally restrict out-of-State waste imported from any one State in excess of certain levels.

There is a cost recovery surcharge provision. States that imposed a differential fee on the disposal of out-of-State waste on or before April 3, 1994, are allowed to impose a fee of no more than $1 per ton.

So there is that $1-per-ton limitation, a differential that a State can impose, as long as the differential fee is used to fund solid waste management programs.

What we are dealing with all through here are the limitations that are imposed by the commerce clause of our Constitution. The bill we are dealing with today explicitly prohibits a Governor from limiting or prohibiting solid waste imports to landfills or incinerators that have a host community agreement to receive out-of-State waste.

In addressing the problem of interstate waste, I, as chairman, and Senator SMITH, likewise as chairman of the subcommittee, have tried to find a solution that will reduce unwanted imports yet give exporting States some time to reduce the amount of waste generated, to increase recycling, and to site new in-State capacity.

What we are trying to do is to take into account the large exporting States' problems, but we are not going to let them export forever.

What can they do? As I say, they can reduce the amount of waste generated, they can increase recycling, and they can set up their own sites in their States to deal with the problem—incinerators, landfills, or whatever they might be.

Title II deals with what is known as flow control. Flow control refers to the legal authority of States or local governments to designate where waste must be taken for processing or treatment or disposal. Over the past 20 years, State and local governments have used flow control as a financing mechanism for the development of municipal solid waste disposal facilities.

What am I talking about? I am talking about incinerators and landfills, for example. A municipality says, "We have to have an incinerator to take care of the waste within our municipality." So they say, "Well, we'll build one. And where do we get the money? We issue bonds. All right, but how are we going to make certain that we are going to have the waste flowing in and the so-called tipping fees?" So the municipality passes an ordinance which says: Everybody in this municipality must take trash to this central facility, and there they pay a tipping fee and you are not allowed to ship it elsewhere. BFI or other commercial firms cannot come in and say, "I'll take your waste for a lower price." No.

The way it works is the locals say you can only take it here, because that is the way we can pay off our bonds.

Flow control guarantees that a projected amount of waste will be received at a designated waste facility. Thus, a predictable revenue stream is generated for the retirement of the cost of the facility, the capital cost, and the operating expenses.

Flow control, as you can see, distorts the waste market by creating State or municipally controlled waste monopolies. Obviously, it becomes a monopoly. If the city of St. Louis says that no trash can be taken elsewhere but to the city incinerator, that is a monopoly. But the city of St. Louis might say, well, we spent a lot of money to build this incinerator and the only way we can pay off our bonds is with a guarantee flow from our municipality so when the big trucks, private trucks pick up, they can only take it to the city of St. Louis incinerator.

Communities across the country have made investments predicated on flow control, but I, and likewise Senator SMITH and Senator BAUCUS, do not believe in perpetuating that kind of system into the future. Designating where waste must go will only drive up the cost of waste disposal for our citizens.

Not unlike the interstate transport of municipal solid waste and its implications on interstate commerce, flow control has emerged as a controversial legislative issue because of several recent Federal court decisions. Over the past 5 years, Federal courts have ruled that flow control laws in no fewer than four States violate the commerce clause of the U.S. Constitution. Similar to restrictions on interstate waste, flow control undermines the commerce clause by barring States and political subdivisions by placing undue burdens on interstate commerce.

This case all came up May 16, 1994, just a year ago. It was called the Carbone case, Carbone versus Town of Clarkstown, NY, which the Supreme Court decided just a year ago. The Supreme Court's ruling in the Carbone case has made it clear that absent congressional action, the exercise of flow control by States and political subdivisions is unconstitutional; it interferes with interstate commerce. The city of St. Louis no longer can say to all its citizens, "You must bring your trash to this central facility." That is interfering with interstate commerce and is unconstitutional, unless Congress decides otherwise.

So we are here today to override the constitutional provisions on State laws

that interfere with interstate commerce and so as to provide new authority to the States. We are beset with communities, such as the illustrative one I gave of St. Louis, that has invested substantial sums of money in their incinerators and are counting on paying off those bonds through the fees that come in and suddenly the whole ground rules are changed by the Supreme Court decision. So they come to us and say, "Grandfather us. We issued those bonds dependent upon this flow of trash."

The Supreme Court has said Congress can do this. We can provide new authority to the States by declaring that the impact of such laws on interstate commerce is reasonable.

Should we move in this direction? I say yes, but a qualified yes. We should tread carefully, and this bill does that.

This Senator believes that Congress was granted the power to regulate commerce in order to ensure the free flow of goods and to protect against economic warfare among the States. We must not create a system that builds walls around our States and our communities. The economy of our country has been successful over the past 200 years because of the free flow of goods and services among our States. Let us not go overboard today loading up this bill with discriminatory amendments. Unnecessarily restricting the interstate transport of waste and providing unlimited flow control will limit competition in the waste market. It will discourage the selection of less costly waste disposal options, and it will force duplicative infrastructure investments in our communities.

The intention of the bill before us today is to provide States and political subdivisions with flow control authority in order to meet financial obligations with respect to solid waste management facilities and to maintain their creditworthiness.

Title II provides limited flow control authority under certain conditions to States and subdivisions that have embarked on these commitments, these financial investments that, rightly or wrongly, were predicated on the expectation or implementation of flow control. They built these facilities and issued the bonds believing that what they were doing was right, was legal and was dependent upon restricting where the trash within their communities could go. It could only come to the municipal landfill or incinerator.

We are not, in grandfathering these provisions, reflecting any position on the appropriateness of flow control as a policy option. In each instance in which flow control authority is granted under this legislation, that grant is predicated on meeting debt obligations.

The final part is title III, which is called groundwater monitoring. In it, we reinstate a groundwater monitoring exemption for small landfills in the municipal solid waste landfill criteria. All of this reflects back on the Resource Conservation Recovery Act, section 4010(c). One of the most significant issues raised during the revision of the criteria was the impact on small community landfills.

As a result, the October 9, 1991, final rule for the criteria included a groundwater exemption of owners and operators of certain small landfills.

In January 1992, petitions were filed with the U.S. Court of Appeals for review of the new landfill criteria. The court, in its review, vacated the small landfill exemption as it pertained to groundwater monitoring.

The purpose of title III of the reported bill is to reinstate the exemption.

As many of us remember from the debate on interstate waste in 1992, the flow of garbage raises intense local and regional concerns. In some areas of the country, this seemingly mundane issue is politically potent. Who would have thought that so much heat could be generated by garbage disposal?

Mr. President, I believe this legislation represents a good-faith effort to bring the various parties together on the issues of interstate waste and flow control. It provides additional authority to waste importers without overriding the needs of waste-exporting States.

It protects past community financial investments with respect to flow control; yet, it provides opportunities for the private sector. I commend the Senator from New Hampshire and look forward to working with him and other Members of the Senate to approve this legislation in an expeditious fashion.

Now, Mr. President, I would like to yield the floor, without losing the same, to Senator BAUCUS for his opening statement.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. I am pleased to be here considering legislation to give our States and communities the right to say "no" to out-of-State trash. That is basically what the major portion of this bill is all about—that is, enabling States to say, "We do not want this stuff and we have the right to say, no, we do not want the garbage." We need this legislation to allow States to do that, and that is basically because of the U.S. Constitution, commerce clause, article I, which basically states that only Congress can regulate interstate commerce, States cannot. So we are now acting in Congress.

Mr. President, we have been working on this issue for a long time—6 years. We have explored a lot of options, we have held many hearings, and we have debated this issue frequently. We passed interstate waste bills in each of the last three Congresses here in the U.S. Senate. I believe it is finally time to finish the job.

I will have more to say on that subject later. Let me say a little bit about this legislation.

Garbage is big business. Each year, the United States throws out more than 200 million tons of municipal waste. That is enough to build a 30-foot wall of trash from Los Angeles to New York. About 1 ton in 14 goes to a landfill or incinerator in another State. Nearly every State is a seller or a buyer in the municipal waste market; 47 States export some garbage, and 44 States import some garbage.

Some interstate movement of garbage makes sense. In Montana, for example, two towns have made arrangements to share landfills with western North Dakota towns. Some trash from Wyoming areas of Yellowstone Park is disposed of in Montana. These arrangements save money for the communities involved. And the establishment of shared regional landfills can be a policy that does make sense.

But it only makes sense when the communities involved agree to it. No place should become an unwilling dumping ground. Nobody should have to take garbage they do not want from another community.

The legislation before us takes us a step closer to preventing Montana and other rural States from becoming a national dump. It lets Governors freeze imports at 1993 levels, and stop new imports if affected communities want them stopped. It is not perfect, but it is a good start.

Mr. President, I want to congratulate the Senators who have worked so hard over the years on this issue trying to develop a balanced bill. Senator COATS has been particularly helpful and particularly committed to enacting interstate legislation. Senators LAUTENBERG, MOYNIHAN, and our new chairman, Senator CHAFEE, and many others have worked tirelessly.

This issue has been around Congress long enough. I think it is time to stand up for the small towns and finish the job.

Senator LAUTENBERG, the ranking member of the relevant subcommittee, is now in the Budget Committee and is not able to be here. He worked hard, along with Senator SMITH, and at a later time he will want to make a statement.

Mr. CHAFEE. Mr. President, I yield to the distinguished Senator from New Hampshire.

Mr. SMITH. Mr. President, I thank Chairman CHAFEE.

Mr. President, this bill is a compromise bill. It is not going to please everyone, and maybe that is the reason why it is a good piece of legislation, I do not know. But a little more than 2 months ago, the Superfund Waste Control and Risk Assessment Subcommittee, which I chair, held a hearing to consider proposals to regulate the interstate transportation of solid waste

and whether to provide local control authority to State and local governments.

The controversy here surrounding the interstate transportation of municipal solid waste is one that the Senate has been considering since 1990. Today, 47 States export approximately 14 to 15 million tons of municipal solid waste per year for disposal in other States—14 to 15 million tons.

While short-distance waste exports have been occurring for some time, the development of a long-haul waste transport market has been a more recent development. With tipping fees as high as $140 per ton in some large cities, compared with the national average of between $30 and $50 a ton, there is an incentive, obviously, from municipalities to transport these wastes by truck and rail to distant States for some permanent disposal.

That is a pretty big incentive. Anywhere from $30 to $50 to $140 a ton is a huge disparity.

Those States that have recently been the recipients of large amounts of long-haul waste have raised a concern that their limited capacity for solid waste is being filled and that they have become a dumping ground for somebody else's waste problems. So over the last few years, 37 States have passed laws to prohibit, limit, or severely tax waste that enters their jurisdiction. However, almost all of these laws have been struck down by the Supreme Court for violating the commerce clause of the Constitution.

So while there has been a recent easing of disposal and the capacity to dispose nationwide, there is still significant concerns about the future consequences of this long-haul system. Congress needs to define what the future is, whether we are going to honor the interstate commerce clause or not, or whether we are going to adjust it or micromanage it, or do something with it. But there are people out there who are impacted, as we speak, by the fact that this decision is still in limbo.

So to address these concerns, Congress—specifically the Environment and Public Works Committee—has been attempting to strike a balance between importing and exporting States. Last year, the Committee on Environment and Public Works, of which I am a member, unanimously reported S. 2345 to address this problem. A number of Members, both on and off of the committee, including very prominent Members who will be involved in this debate over the next couple of days, like Senators COATS, SPECTER, LAUTENBERG, MOYNIHAN, and others, took a very active role in attempting to develop a compromise that importing and exporting States could live with. While the Senate easily passed this compromise by a voice vote on September 30, 1994, it was the end of the session and time ran out before this issue could be finally resolved.

So this legislation has been a balancing effort, a real balancing effort. In regard to the interstate transportation of municipal solid waste, we have tried to carefully balance the issues of both the importers and the exporters, and nobody is happy with the interstate language. Perhaps that indicates to me, as I said earlier, that we might be on to something.

The bill that Senator CHAFEE and I introduced incorporates the interstate waste bill that unanimously passed the Senate last year.

Let me repeat that, because I think in the debate, as the chairman, Senator CHAFEE, knows, it is getting lost. What Senator CHAFEE and I are offering in the area of interstate waste transfer unanimously passed the Senate last year. That is what we put in our bill. That is simply all we are offering this year.

Mr. CHAFEE. Mr. President, could I ask a question to make a point?

When it passed unanimously last year, that was when the other party was in charge, had the majority. So not only did all of the Democrats vote for it in a bill that was drafted by a majority of the Democrats in the committee and approved on the floor, but every Republican likewise voted for it.

So two different parties have worked on this legislation over 2 separate years and come to exactly the same result. Having passed unanimously last year, I certainly hope we can get on with the same language, get the same approval this year of the same language.

Mr. SMITH. I thank Senator CHAFEE for making that point. He is correct. This is not a partisan issue. It is a carefully crafted compromise to try to accommodate some genuine concerns out there among many individuals.

Again, in the Senate, controlled by the Democratic Party last session, it was passed unanimously. The Republicans are now under control, and we are offering the same language again on interstate transfer. There is not any reason why we should have a huge fight here, unless people, for whatever reason, are trying to capitalize on something or take unfair advantage.

We felt it was fair and we continue to feel that now. Senator CHAFEE and I are in agreement on that, and I know there will be Senators from both the importing and exporting States that will try to weaken or strengthen, depending on their position, the interstate portions of this bill. The bill is in two sections—both interstate as well as flow control. There are two sections to the bill.

My response is, we struck this compromise last year, all parties agreed, and there have been no significant changes. What would be the fight?

Let me move to the issue of flow control, because we have heard statements from a variety of individuals before our committee, very prominent individuals. Senator BILL COHEN, Governor Christine Whitman of New Jersey and others, Congressman CHRIS SMITH of New Jersey, who asked Members to move quickly to address the issue of flow control. And we did. We moved very quickly at the behest of those individuals.

Frankly, ever since we moved quickly at their behest, we have been getting beat about the head and shoulders by some who asked Members to move at their behest. A number of witnesses expressed a strong concern that without prompt congressional action to provide for continued authority in this area, many communities would be in danger of having their bond ratings lowered. That is true.

For those of my colleagues who may not have heard me speak to this issue on the subject of flow control, let me be clear. This bill is in my subcommittee, the Superfund Committee, which I chair. It is in my jurisdiction.

I tried to craft a compromise, which I think we did successfully, to get the bill to the floor and help those people who did have a problem. I oppose flow control. I think it is wrong. I do not support walking away from the interstate commerce clause of the Constitution. I believe that we ought to stand firm on that.

There is a situation that has developed, as Senator CHAFEE has already outlined, where individuals—municipalities—have let bonds, and there are people who stand to lose on this. So we tried to craft a compromise. In that compromise, we basically grandfathered, with reasonable grandfathering provisions, those communities.

I do not believe that flow control is necessary to deal with the problem of solid waste. We do not—I think the private sector can do it just fine. I do not believe the free market is broken. There is no evidence that the free market is broken in this area.

There are many people who are involved in the transport of this material, and I refuse to believe that recycling cannot be accomplished without flow control. I simply do not believe it. I do not think there is any evidence to say that. But some States and some communities got themselves in a bind, and we are trying to help them out of that bind.

Instead, we are being attacked for trying to help them, in many ways by those who wanted it and now have dramatically changed or moved their position. That is the reason why nothing has happened, because everybody wants their position.

This is a compromise. That is the point. I am sympathetic to the communities that feel they need congressional assistance on this matter. There are some. If we are starting from ground zero and there were no bonds let, no

contracts signed, Mr. President, I would be here on the floor saying no flow control, period.

However, it was because of this plea, that Senator CHAFEE and I moved forward to introduce this legislation, S. 534, that would provide the flow control authorities to those municipalities that imposed flow control and either constructed or began construction of facilities prior to May 15, 1994, the Carbone decision.

While our bill provides limited grandfather protection for flow control, it also—and this is the key issue—it gives finality. This is final. At the end of 30 years it is over. There is no flow control anymore. We now have the free market kick in. We have help during this 30-year period which I think is more than ample. There are not any bonds I am aware of beyond the 30-year period. So precisely 30 years after the legislation is adopted, no further flow control measures will be allowed—none, zero, zilch.

Both my subcommittee as well as the full committee moved very quickly to mark up this legislation. We did so primarily to help those communities whose bond ratings are endangered as a result of the Supreme Court's recent action. They are. We agree they are. They should not have gotten themselves in that position, but they did. Rather than get into whether or not they should not have gotten into that decision, we did not use that as a criteria. We simply said for whatever reason, they made some decisions that maybe they should not have made, but they are in that position so we will help them out.

Speaking for myself, I am very uncomfortable with providing flow control authority. I do not want flow control authority. I felt that the bill of Senator CHAFEE and myself struck a fair balance in accommodating those who are strong proponents of States rights and those who are strong proponents of the free market. It is a compromise for both of those positions.

During the course of the last 2 months, I have continued to work to accommodate Senators who had concerns about various proceedings in the bill. Everyone wants a fix. We are now hearing from the sublime to the ridiculous. "Well, we might have a contract in 5 years, we are thinking about it. Could we be exempted?" No, absolutely not. We are not going to exempt them, if I have anything to say about it. That is wrong. It defeats the spirit and intent of what we are trying to do.

We cannot satisfy everyone. We have tried. We tried hard to address the legitimate concerns, and we will address those concerns. Some of the amendments we will accept. Some we will not.

As a result of our efforts, the EPW Committee ordered this reported as amended on March 23 by a rollcall vote of 16–0. Again, the whole sequence of events here: Last year it was unanimous, no objection by Republicans or Democrats in the Senate in a Democrat Congress. We have a Republican Congress, it passes the committee 16–0.

That says something about this bill. It says that those people out there who are trying to dramatically alter the bill are simply on a course that is not going to be in the best interest of those people who are sitting out there right now waiting for help, which is why we mark this bill up.

I have to say if we ask Senator SMITH, "What are your priorities in the subcommittee of the Superfund?" It is Superfund reform. That is what we are working on. We have had six hearings on it. We have another hearing tomorrow. We had one yesterday. We will try to draft a bill in the next 6 weeks to 2 months, and that is a high priority.

Because people came to me, including the ranking member of the subcommittee, Senator LAUTENBERG, and outlined these problems, we agreed—Senator CHAFEE and I and others—that we would bring this bill to the floor as quickly as possible. We have done that and, frankly, with great difficulty, simply because we have been focused on the Superfund issues. I did not anticipate the amount of amendments and the amount of opposition that would be generated on this bill.

But let me just make this very clear to my colleagues. I believe this is an emergency bill for those communities or individuals or entities that have let those bonds. There are communities in a number of States that need quick passage of this legislation to provide them with the financial relief for their previously flow-controlled facilities. If this bill gets bogged down because of amendments, everyone trying to get their way—they want total flow control or no flow control or no grandfathering or we move into the interstate waste transfer and they want no exporting or total exporting or the Governor having the total right to make decisions and communities having no rights or whatever—whatever the position may be, if they insist on that, this bill will get bogged down. It will not get passed by the end of this week, this legislative week, on Friday. And the budget will be up next week.

After that, I cannot imagine where there will be a window of time to deal with this again. So I appeal to my colleagues who desperately want this bill to help them and their communities in their States with this flow control to not hold this bill up by adding amendments or trying to add amendments that may in fact derail it. Because once it is derailed, in my opinion, it is going to be a long time until it gets back here.

It is the leader's decision, of course, when it comes up. But the point is there is so much on the table after Monday when the budget comes up, any discussion of flow control, with all due respect, is going to be way down here when the budget and the numbers in that get out and the American people begin to interact with their Senators and Congressmen on that.

So I think there is going to be a lot of discussion. If Members choose to oppose this or dilute it or whatever they choose to do, or even—maybe they would like to strengthen it—they will do it at their own peril. This issue, which has been simmering for the last 6 or 7 years, will continue to remain on the back burner during the 104th Congress.

I hope that does not happen, but the choice is clear. Either vote to pass this bill which has the overwhelming majority support, maybe unanimous support, in the Senate and protect those facilities that come within the scope of this bill, or risk it all to protect a small handful of communities that do not fit within this legislation, who are trying desperately to create a situation where, if they want to have flow control at some point in the future, they can have it, or if they have let a little bit of money out there somewhere, a relatively insignificant amount, and they are not sure what they are going to do—that violates the spirit and intent of this bill and I hope it does not happen.

We will be down here as long as it takes to deal with the amendments. I appeal to colleagues, if they have amendments, let us try to work them out. We will try to work out the ones we agree with, and if we can agree with them, we will accept them. If they violate the spirit and intent of what we tried to do in drafting this bill, we will oppose them forcefully on the floor of the Senate.

Let me conclude with a brief summary as follows. Communities out there, as far as flow control is concerned, are in a tough situation. According to the public securities situation, $20 billion in bonds have been issued to pay for flow-controlled facilities. That is not the fault of the U.S. Senate. The interstate commerce clause, I believe, was in effect when that happened. But somehow it got ignored and they got into this bind and they have $20 billion in let bonds.

We are going to try to help them and we do help them with this legislation. We grandfather them, we protect them. We protect the investors, the bondholders, the taxpayers, the individuals out there who have in whatever way participated in these bonds.

As a result of the Carbone decision, the Supreme Court invalidated flow control, so it is in limbo. Here we are in limbo. Nobody knows what to do. They do not know whether to proceed or not to proceed, because they do not know what Congress is going to do in regard to the interpretation of that decision.

Six incinerators in New Jersey have had their bond ratings lowered, and I am sure that is the case in other States, because flow control was invalidated. Again, we are trying to help those communities. That is the goal. Dozens of incinerators and landfills are in immediate danger if flow control is not reauthorized immediately, and every bond based on flow control authority is threatened, every one. Every single bond out there is threatened unless we do something soon. The longer it goes on the worse the threat gets.

So the bill provides a narrow flow control authority to protect those bonds. Again, it is a compromise. It is a fair compromise. It is not my position totally. I would be for no flow control. That is not my position. But it is a compromise position to help those individuals.

With that, Mr. President, I yield the floor and indicate I hope we could get some time agreements and some reasonable information regarding these amendments. If Members who have amendments could come to the floor and offer them in a timely manner so we do not get bogged down and not pass this bill by the end of the week.

Mr. CHAFEE. I thank the distinguished Senator from New Hampshire.

PRIVILEGE OF THE FLOOR—S. 534

Mr. CHAFEE. Mr. President, I ask unanimous consent James McCarthy, of the Congressional Research Service, be granted the privilege of the floor for the pendency of S. 534.

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

Mr. SMITH. Mr. President, I ask unanimous consent Mr. Paul Longsworth, a U.S. Department of Energy employee assigned to my staff for a period of 1 year, be granted the privilege of the floor for the duration of the consideration of S. 534.

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

The Senator from Oregon.

ENDANGERED SPECIES ACT REFORM AMENDMENTS

Mr. PACKWOOD. Mr. President, I am pleased to join with my colleagues as an original cosponsor of the Endangered Species Act Reform Amendments of 1995. This bill is the result of several years' work. The bill represents the culmination of a broad, grassroots effort to bring balance to the Endangered Species Act. This coalition consists of miners, ranchers, loggers, refiners, manufacturers, the fisheries industry, and organized labor.

There are problems with the current Endangered Species Act. The Endangered Species Act is an act that has gone awry. It is wreaking havoc on our communities and economies, particularly in the Pacific Northwest, but increasingly nationwide. It is devastating entire regions and industries. In the Pacific Northwest alone, since the spotted owl was listed as threatened in 1990, millions of acres of Federal timberland and thousands of private acres have been set aside. It takes about 1,300 acres for a pair of owls to breed, so we are told. We have set aside thousands and thousands and thousands of acres in hopes of the owl being saved. No guarantee it will, no guarantee it will not, but a tremendous damper on legitimate economic activity.

It has impacted tens of thousands of human beings and hundreds of rural communities. The estimates on job losses range from a low of 35,000 to a high of 150,000 in the Pacific Northwest.

I was here when the act was originally passed, and I remember what our intention was. We were thinking "a" project: a dam, a road, a canal versus a species. When you read the debate, when the original Endangered Species Act was passed, I do not recall the word "ecosystem" being mentioned in the debate. None of us was thinking of an entire section of the country being affected by one species. Yet this act is now being used as a tool by environmental groups to further their agenda of locking up not only all public land but much private land as well.

I want to emphasize again, this act applies to private land. For a long time I think people thought this was a public land issue in the West, that while it might limit the activities of the U.S. Forest Service or the Bureau of Land Management or the U.S. Park Service, it did not affect private land. It does. It affects your right in ownership. It can diminish the value of your land in every sense. The Government can take your property under the current Endangered Species Act and not pay you. Private property owners are increasingly losing the right to use their property as they intended.

Let us look at the economic cost of the Endangered Species Act. Edward O. Wilson, a renowned entomologist, has observed that there may be something on the order of 100 million species and yet only 1.4 million have been named. How many billions of dollars are we willing to spend attempting to save insects, bacteria, fungi—that we have never heard of, never identified, for which there may be little or no chance of recovery. Yet in the effort, we will cause dislocation and hardship for thousands and thousands of people.

The social impacts are no less devastating. Professor Lee, Robert Lee, at the University of Washington in Seattle in the College of Forestry Resources, has an interesting background: an undergraduate degree from the University of California in sociology and then a graduate degree in forestry. He has done extensive work on the social trauma that affects timber towns. He points to the destruction of families, long-lasting social fallout. He can identify it, pinpoint it. He points out that, if you are going to go ahead and apply the Endangered Species Act and close the mill in this town—and it does not take a very big mill if you have a town of 2000 and you have a mill that employs 150 people—that mill is in essence the backbone of the town. If you close it, he says he can guarantee that you will see an increase in suicides, homicides, divorce, juvenile delinquency, drug abuse, spousal and child abuse.

He is not saying that in this town this is all going to happen. What he is saying is when you take a 45- or 50-year-old mill worker who married his childhood sweetheart in high school, lived in town all of his life, his children are in the school, he is making $25,000, $26,000, or $28,000 in the mill, it is the only job he is trained for, and the only principal occupation in town is the mill. It is closed. His mother is still alive and he does not want to leave the town. You take away his livelihood. The Federal Government takes away his livelihood.

Professor Lee says you can bank on it, as sure as we are here, that you are going to have the increases that I talked about in the suicides, homicides, the abuses, the divorces, and alcoholism. It is understandable when you think about it. A 45- or 50-year-old is not likely retrained, does not want to move from town, has lived there all of his life. Those things are as likely to happen as you and I being in this Chamber today.

It is ironic that for years we considered the needs of humans as though nothing else mattered. During that period, probably a long period in our country when we developed this country, from approximately 1800 to 1960, we moved west. We gave no thought to limitation of resources because we thought the resources were unlimited. I am old enough to remember in the Pacific Northwest within the last 30 to 35 years when the electric companies advertised: "Use more electricity. The more you use, the less per unit you will pay. Have an all-electric house, electric furnace, electric air conditioning." The theme was, we will never be able to use all of the electricity we generate. If we ever have to have more, we will build another dam. Or, as we got into the seventies, we will build nuclear plants. But it was use, use, use.

As we moved across the West, the pioneers came over those mountains and they looked at valleys and mountains of timber, timber, and more timber. It is understandable why they thought that those resources could never be used up. These resources were plentiful. The pioneers were not malicious people; they were not greedy; they were not selfish. But they saw the land and thought it was good and right to develop it.

Mr. President, if 100 years ago, 150 years ago, we had on the books, only two laws, the Endangered Species Act and the Wetlands legislation, we would not have developed the West. Every railroad you see, once you get across the Great Plains, is built on rivers and fill. We never would have cleared the valleys, never would have cut the trees and pried out the rocks and farmed it. You would have been prohibited from doing it by just those two acts. But as people moved west, they saw nothing wrong with clearing the land. As a matter of fact, the native Americans, and the early settlers, when they were there saw nothing wrong with burning the trees. They did this not for any kind of malicious intent; they burned for ecological reasons. I doubt if you could do that today.

Things changed. I understand why. You had the century and a half of moving west. You developed the resources, harnessed the rivers, and plowed the land. There was not much thought about the environment, and certainly not much thought at all about endangered species. Then along came Rachel Carson's book, Silent Spring, which I like to say is the pivot upon which the environmental movement started. Basically, the book dealt with agricultural pesticides and runoffs and the damage these were doing. But from that moment forward, you could see the pendulum, which had swung for 160 years toward development and exploitation of the resources, swing in the other direction. Now the pendulum has swung completely the other way.

I do not level this charge at everybody who is a member of the Sierra Club or the Wilderness Society. By far, most of them are very reasonable, decent people. But they are accusing unjustifiably a group of people who are excellent stewards of the land, people who living on the land and taking care of the land and replenishing the land. The irresponsible utilization of natural resources is wrong. But I do not know anybody who is a farmer who wants to misuse and abuse his or her land and not have the option of passing it along to their children. I do not know of anyone—if they used to exist, I do not know them now—in the timber industry who wants to cut and run. Everyone I know in the timber industry who is in the industry wants to cut and plant and grow, and cut and plant and grow forever on an intelligent, sustained-yield practice of forestry.

There is only one group where I have seen a danger. And it is not their fault, and I do not blame them. You are a little woodlot owner. You have 60 or 70 acres of land. You are not Weyerhauser. You are not a commercial timber company. But you have 60 or 70 acres of land. You have been managing it well, and you cut a bit, and you plant a bit. You will use some of it to educate your kids, and maybe some of it to help their families, and maybe some of it for retirement. You are faced now with the possibility, under the Endangered Species Act, that you may be prohibited from cutting on your land at all. Right at the moment, you are not cutting and had not intended to cut. Do you know what you are thinking to yourself? "I had better do it now. I had better cut and run and get out while I can still get my money to educate my kids and do some of the other things I had planned to do, because maybe in 5 years, the Endangered Species Act will not let me cut at all." This is a person who is willing to and had planned to cut and plant land that will be in the family for generations. These are the kinds of unintended consequences we face because of this act.

Under the Endangered Species Act, we have to remember that we must balance both species and humans. But here is the problem with the present act. I want to phrase this carefully. This is the present act. When you are determining whether or not a species is threatened or endangered—those are the two classifications under the act—you are to use the best scientific evidence, and nobody quarrels with that.

Realizing science can be wrong, you may recall that science said if we built the Tellico Dam, the snail darter would disappear. We went through a long battle on the Tellico Dam. Finally, the Endangered Species Committee—the God Squad, as we call it—said if we built the dam, the snail darter would disappear and that was to be the end of it. Congress overruled the Endangered Species Committee and said finish the dam, build the dam. We do not care if the snail darter disappears. The dam is all but done. We just have not dropped the gate. Go ahead with it. We were told we would run the risk of the snail darter disappearing. The best scientific evidence said it would disappear. What happened? We dropped the gate, the reservoir filled up, and the snail darter exists in all of the streams that flow into the reservoir. Science was absolutely wrong. This is no excuse not to use science, but science is not perfect.

I have no quarrel with listing a species as threatened or endangered and using the best science that we know. I would like there to be good scientific peer review, and I would like a chance to appeal to the courts should you have a really horrendously bad decision. But I think the best science ought to be used.

Now you come to the issue of whether or not you are going to have a recovery plan to try to save the species. And here, only the species counts. If you cannot come up with a recovery plan under the present law, if you cannot come up with a recovery plan that will save the species, or, to put it the other way around, if every recovery plan that you can think of by the best scientific evidence will lead to the extinction of the species, then nothing else counts. People do not count. Revenues to counties do not count. Whether or not the schools have enough money to keep going does not count. Nothing counts but the species, and that is where this act is not balanced.

So, Mr. President, I am glad to join a number of my fellow Senators in introducing amendments to the Endangered Species Act. We think these amendments are a balance. We are not getting rid of the act. We are not getting rid of science. As a matter of fact, we are asking for stronger science, for better science, for better review. But this act finally allows people to be considered as much as bugs. And that has been the failing of the present law.

I hope the Senate will favorably consider this. I am proud to join as a cosponsor.

I am pleased to join with my colleagues as an original cosponsor of the Endangered Species Act Reform Amendments of 1995.

This bill is the result of several years' work.

The bill represents the culmination of broad grassroots efforts to bring balance to the Endangered Species Act.

This broad grassroots coalition consists of miners, ranchers, loggers, farmers, manufacturers, the fisheries industry, and organized labor.

PROBLEMS WITH CURRENT ENDANGERED SPECIES ACT

The Endangered Species Act is an act gone awry. The act is wreaking havoc on our communities and economies, particularly in the Pacific Northwest, but increasingly nationwide. The act is devastating entire industries and regions.

In the Pacific Northwest alone, since the spotted owl was listed as threatened in 1990, millions of acres of Federal timberland and thousands of private acres have been set aside for owls.

The act has impacted tens of thousands of human beings and hundreds of rural communities.

Estimates of the number of jobs lost as a result of the listing range anywhere from 35,000 to 150,000.

The act was originally intended to ensure the survival of species that were threatened by site-specific projects, such as roads, dams, and sewer systems

The act is now being used as a tool by environmental groups to further their agenda of locking up not only all public land, but private land as well.

Private property owners are increasingly losing the right to use their property as they intended.

ECONOMIC COSTS OF ESA

Edward O. Wilson, a renowned entomologist at Harvard observes that there may be something on the order of 100 million species.

Yet only 1.4 million have been named.

How many billions of dollars are we willing to spend attempting to save:

fungi, insects, and bacteria we've never heard of, and species for which there may be little or no chance of recovery in any case.

SOCIAL COSTS OF ESA

While the economic costs of protecting species is great, the social impacts are no less devastating.

Robert Lee, sociologist with the University of Washington College of Forest Resources, has done extensive research on the social trauma afflicting timber towns. He points to the destruction of families and long-lasting social fallout in the form of suicide, homicide, divorce, juvenile delinquency, drug abuse, and spousal and child abuse.

It is ironic that for years we considered the needs of humans as though nothing else mattered.

Now, under the Endangered Species Act, we are considering the needs of fish, wildlife, and plants as though nothing else matters.

Both policies are short-sighted and flawed.

CURRENT EFFORTS

We need a process which not only protects plants and animals, but one which recognizes legitimate human needs as well.

That is why, in the last Congress, I joined with Senators GORTON, SHELBY and others in introducing legislation to bring balance to the Endangered Species Act.

This year, with even stronger bipartisan support, we have again introduced legislation to require that the economic and social impacts of Federal efforts to protect species be fully considered.

SUMMARY OF BILL

Our bill contains several components essential to meaningful reform.

The bill reforms the process by which species are listed as threatened or endangered:

Requires independent scientific peer review of the science;

Requires better data collection.

Provides for broader participation by affected States and the public;

Requires judicial review of listing decisions;

In place of intensive Federal management, the bill includes incentives to encourage private landowners to protect species, such as:

Encouraging the exchange of private land for Federal land to provide habitat for affected species; and

Establishing a Federal cost-share program for any direct costs imposed on a private person.

Our bill requires the Secretary to set a "conservation objective," ranging from full recovery of the species to solely protecting the species from actions which would directly injure or kill the species.

In other words, the Secretary could decide to allow a species to go extinct.

Our bill requires that economic and social impacts are fully considered in the development of conservation measures.

Our bill changes the statutory definition of "harm" and "take" to mean the actual injury or killing of a member of a species.

"Harm" will no longer apply to the modification of a species' habitat as the courts have broadly interpreted current law.

Our bill minimizes the impacts to private property.

CONCLUSION

It is not our goal to abandon our national commitment to the protection of endangered species; however, we cannot protect every imaginable species.

We can do a better job of balancing jobs and economic opportunity with species protection.

While this bill does not go as far as I would like, it will begin the debate which is long overdue.

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

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

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

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

PRESIDENT CLINTON BRINGS HOME NOTHING

Mr. MCCONNELL. Mr. President, President Clinton has gone to Moscow, and he has come home with nothing. I repeat: President Clinton has gone to Moscow, and he has come home with nothing.

There has not been much coverage yet of the summit over there in Russia, but it is pretty clear that President Clinton has in effect gone to Moscow, given President Yeltsin an opportunity to show that he can deliver the President of the United States for a celebration of the end of World War II, and we have had no progress on stopping the sale of nuclear material to Iran, no apologies about the slaughter of 25,000 people in Chechnya.

In summary, Mr. President, very little, if anything, has been accomplished at this summit that would benefit this country.

Now, arguably, our President showing up over there has helped President Yeltsin and the Russians, but typically we think of these summits as producing something beneficial for our side. It does not seem to me there has been one single step in the direction that we would like to see us go as a result of this summit.

The issue, of course, is not whether we have a relationship with Russia. We all want to have a relationship with Russia. The question is, What kind of relationship is it going to be?

During the past 2 years, we have seen a real change in the makeup of President Yeltsin's inner cycle or kitchen cabinet. He has fired reformers and replaced them with hard-line reactionary advisers who are suspicious of free market reforms and suspicious of democracy. Some observers have said there is only one reformer left in the cabinet and he is the one they sent over here to the United States to talk to people in the Senate.

In a recent hearing, I asked Deputy Secretary Talbott to identify a single voice of reason in the kitchen cabinet; just one. Secretary Talbott changed the subject.

Yeltsin's decisions are making it very difficult to sustain support for assistance to Russia.

In February, Secretary Christopher said the President would not go to Moscow for a summit if Chechnya were unresolved. Well, the President is there and Chechnya is unresolved. Almost as soon as that line was drawn in the sand by President Clinton, he backed down.

Current Russian policy test United States interests and principles. In fact, current Russian policy makes no sense at all, Mr. President.

In Chechnya, basic principles of democracy and human rights are under siege. It really begs the question: Does a democratic government turn its guns on its civilians, killing 25,000 men, women, and children?

Preliminary indications are we have accepted Yeltsin's determination that this is basically an internal matter and is none of our business. Essentially, that is what President Yeltsin said: "This is our affair. You butt out, President Clinton."

Both our security interests and our allies are threatened by the pending sale of nuclear technology to Iran. The biggest current issue between ourselves and the Russians is the pending sale of nuclear technology to Iran. And the President has said earlier in the year he would not go to Moscow for this celebration of V-E Day unless there was progress on that issue. Well, there has been no progress. The nuclear sale continues to go forward.

This agreement that the administration has announced that there will be no sale of the centrifuge technology is simply not adequate. That is a figleaf to allow President Clinton to claim somehow that progress was made on deterring the nuclear transfer to Iran when, in fact, no real progress has been made.

In addition to that, Mr. President, nothing has changed on the issue of NATO expansion and other European security questions. Everyone was surprised by the Russian reversal last December when Yeltsin and Kozyrev denounced NATO plans to enlarge itself

and rejected the Partnership for Peace program. Combined with recent statements that Moscow has the right to use force to protect Russian minorities in the Soviet Republics, leaders across the region are justifiably concerned. It should have been essential for the summit to produce a concrete commitment by Yeltsin to respect the political, economic and territorial sovereignty of those countries that used to make up the Soviet Union.

In summary, Mr. President, what is going on here is the Russians are saying, "We don't want you to expand NATO. And, oh, by the way, all the countries that we used to dominate, that used to be part of the Soviet Union, are our business and none of yours."

No progress has been made at this summit on any of these issues; not a single shred of evidence of any progress whatsoever on any of these issues.

Mr. President, I, like many Members of the Senate, want to get along with the Russians. Obviously, we have a better relationship than we did during the cold war, but some days I wonder where this relationship is going. It seems to me, by pursuing this Moscow myopia, this view that whatever Yeltsin wants Yeltsin gets, by pursuing that particular point of view, we stand no chance of having the opportunity to build a genuinely constructive relationship with the Russians.

So let me just, in sum, Mr. President, say that I think this summit has been a disappointment. I am sorry that President Yeltsin has been unable to commit to any of the progress that we had hoped for, but mostly I am sorry that President Clinton chose to go. Why is he there?

At virtually every summit in my memory, something has been brought back that was arguably in the interest of the United States. President Clinton has gone to Moscow, gone to Moscow at President Yeltsin's request, given President Yeltsin an opportunity to look good, made no progress on the nuclear sale to Iran, made no progress on the expansion of NATO, and comes home emptyhanded. So, by any standard, Mr. President, this summit is a disappointment.

I yield the floor.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I am very pleased that the Senate today has turned its attention relatively early in the session to a bill of primary importance to my State of Indiana and to many other States in this Nation. It is a bill that the Senate is very familiar with, one to allow States to limit the importation of out-of-State waste. We have discussed it on numerous occasions.

I want to thank the chairman of the subcommittee, Senator SMITH of New Hampshire, and the chairman of the full committee, Senator CHAFEE, for bringing this bill to the floor, as well as the ranking member, Senator BAUCUS, and, of course, Senator DOLE for scheduling this legislation.

Early in my Senate career, which has not been that long, I observed a phenomenon in Indiana as I was driving through the State. All across the State homemade signs posted on telephone poles or stuck in the ground appeared that said, "Don't dump on us."

I began to inquire what the subject was. We checked into that and found that the citizens throughout Indiana, many small towns in particular, found that, instead of the local garbage dump which received a truck or two of local community waste, garbage, a day, suddenly they discovered that 18-wheelers were lined up for blocks waiting to enter the local dump to dump their waste. And people said, "Where is all this coming from?"

You really cannot call these facilities landfills, because they were designed for receipt of small amounts of everyday household trash, waste, that was picked up maybe a couple of times a week at most and delivered to the local dump.

In a little more than a year, our State saw negligible volumes of out-of-State trash that were coming into the State explode to more than 20 percent of our total waste disposal. Virtually overnight, the State of Indiana became a target for out-of-State trash.

The statistics do not begin to tell the story. Because, as I said, the trash parade targeted many small communities in rural areas in Indiana. So the magnitude of the change was dramatic for the citizens of those communities.

Let me just tell you one story, the story of Center Point. This small town in Indiana, a town of 250 people, had a local garbage dump. Not a landfill, it was not certified as a big landfill. It was just a place where the local citizens were able to dispose of their local trash. A couple of trucks picked up the trash in the community and surrounding areas and disposed of it in this area.

In 1989, the local landfill was purchased by out-of-State investors, and the site was doubled. Ads began appearing in national magazines that said: "Send us your trash." Narrow country lanes were clogged with 18-wheelers loaded with trash and garbage from other States. Local citizens, rightfully so, I believe, began to keep a watch on a daily basis, on a 24-hour-a-day basis. They would log in the license plates of the trucks coming to bring the trash, and we found that most of it was coming from just a few States.

I heard about the incident. I asked my staff to take me there. We went early one morning, and we stood on a hill overlooking the landfill, which now had been expanded considerably. I saw on this narrow, unpaved country lane a whole long line of 18-wheeler trucks that had driven all night to bring east coast waste to Indiana because the disposal fees were so much less than they were at the point of origin.

Suddenly, this little town of Center Point was overwhelmed, as its fragile country roads were torn up by the weight of the 18-wheelers, as signs and posts were knocked over as the 18-wheelers tried to negotiate the narrow turns, and as a landfill facility, a garbage disposal facility designed to take care of the needs of that community for many, many years in the future suddenly was the subject of unwanted and extraordinary volumes of trash, which became obvious were going to quickly fill up that local community's disposal site, leaving its local citizens with no local option to deal with their own waste problem.

Capacity that was sufficient to meet local needs for years was suddenly being used up in months. Hoosiers were understandably angry, and I was angry. We had a very clear message we wanted to deliver, and I delivered that on this Senate floor: That our State, which had mustered the political will to site landfill capacity in our own State borders, within those borders, to dispose of our own generated waste, were overwhelmed by trash flowing from States that were unwilling to responsibly handle their own waste.

Today, Mr. President, over 15 million tons of trash cross State lines. Indiana, Pennsylvania, Ohio, Virginia, and Michigan have borne a disproportionate share of receiving that capacity. We happen to be on an interstate route that runs east to west, Interstate 70. Interstate 70 has become the trash corridor for the flow of east coast trash to lower fee landfills in the Midwest.

Americans throw away about 180 million tons of solid waste yearly. That is enough trash to spread 30 stories high over 1,000 football fields. The question that confronts us is where are we going to put all this? Some communities have been pretty creative. Ten miles from downtown Detroit, there is an old landfill accommodating 21 years' worth of the city's garbage. It rises 150 feet into the sky. It no longer receives trash, but city officials have covered it with some top fill and they make snow in the winter and they declared it a ski area. It is colloquially called "Mount Trashmore," and it attracts thousands of visitors a year. But for most, trash is not a recreational resource; it is a municipal nightmare. Landfills fill up, and there is nowhere else to take the waste.

So our Nation's heartland is becoming our Nation's wasteland as trash increasingly moves across State lines following the route of cheap disposal from the East to the West.

Of the 15 million tons of trash crossing State lines, Indiana, Pennsylvania, Ohio, Virginia, and Michigan have borne, as I said, a disproportionate share. This rising tide of trash wreaks havoc with our planning efforts which, by our own State law, must ensure local capacity for 20 years.

Some States have reacted to this influx of out-of-State trash by forbidding all new landfill sites. Others have taken measures which amount to the nationalization of the trash industry by banning for-profit disposal facilities in order to give States control over this. Because public facilities may discriminate between in-State and out-of-State, one method of eliminating unwanted out-of-State trash is to restrict the commercial sector altogether.

These are not feasible solutions. These do not go to solving the problem. Our own legislature has tried to take care of the problem, but has found that its ability to act effectively is extraordinarily limited. We had a discussion of that this morning. The Senator from Rhode Island, and others, talked about the fact that under the commerce clause of the Constitution, garbage waste is considered a part of interstate commerce, and unless the Congress affirmatively acts to grant States and local jurisdictions the authority to control the flow of waste, they do not have the power to do so. That is why we are here. That is why we have been pursuing for these last several years the prospect of giving these States and these local communities the authority to regulate the flow of out-of-State trash.

We passed laws in Indiana, for instance, that would impose additional fees, that allowed us to check the content of the material coming in. The statute that we passed was on the books 4 days before it was challenged in the court as a violation of the commerce clause, and that case eventually was lost by the State.

Frustrated by the court decisions, Indiana has turned to bilateral agreements. Our Governor and the former Governor of New Jersey agreed to cooperate in stopping illegal waste from New Jersey. They agreed to share information and to pursue joint investigations.

Mr. President, the vast majority of waste shipped across State lines is not illegal waste, it is just ordinary garbage. It is the coffee grounds and eggshells and orange peels, discarded Dr. Pepper bottles, the newspaper, unless it is recycled—just the ordinary waste that each of us carries out to the trash bin in the garage and puts out once or twice a week in front of the house.

In addition, we have no way to accurately count the amount of trash we are receiving illegally to determine what that is. Many shipments are sent indirectly through collecting points in other States. To determine what came from a particular State to Indiana that might be legal or illegal requires a procedure that is an investigative nightmare.

As our own Governor has indicated, and as many other Governors have indicated, and as I believe a solid majority of Senators and Representatives have indicated, the only hope for a solution lies with Federal legislation.

In November 1989, my first year in the Senate, the 101st Congress, I introduced the first bill in the Senate which would allow States to ban, regulate, or impose fees on the interstate transportation of solid waste. After a strenuous debate, this bill passed by a very significant and, I think, surprising vote of 68–31. Unfortunately, in the conference with the House of Representatives, the bill which was passed here was stripped from that bill and the legislation died before becoming law.

In the very next Congress, I again introduced legislation and again forced the issue on the Senate floor. And, again, the Senate acted decisively on the interstate issue, now by a vote of 89–2. The Senators became aware of the problem and realized that their States may not have been the current target of out-of-State waste, but a little bit further down the road they were going to become targets. Many realized that the problem we identified in Indiana in 1989 was now a problem in their State. Senator EXON came to me and said, "Since you raised this issue, I have discovered communities in my own State that are becoming the recipients of out-of-State trash and they are overwhelming our efforts to deal with this."

That bill I introduced in the 102d Congress operated on three basic principles: First, it allowed communities that did not currently receive out-of-State trash to prohibit new shipments without express authorization. Second, it grandfathered facilities that were receiving trash from other States in order to give the exporting States time to site their own State capacity. It recognized that States in the crowded east coast corridor had significant waste disposal problems, and that to simply slam the door and say that, as of this date forward, you cannot export any trash whatsoever was simply not going to be a solution to the problem. So in recognizing that, we grandfathered a certain amount of shipment of out-of-State waste.

Third, it allowed Governors the authority to freeze volumes at current levels at the grandfathered facilities, because we wanted to give the Governors of the importing States the ability to say we can continue to take so much with this capacity but no more. Again, that legislation, while it passed the Senate 89–2, did not pass the House of Representatives and it died in that Congress.

In the next Congress, the 103d Congress, I used those principles to craft legislation that the Senate again positively addressed and the House positively addressed, but unfortunately it died in the last hours of the session coming very close to being enacted into law.

Now, here we are in the 104th Congress and I indicated back in 1989 that this issue was not going to go away. They can kill it in conference; the House can kill it; it can die by procedural methods, but I was not going to give up. I was like a dog who had his teeth sunk deep in the bone and I was not going to let go; I was going to come back and back and back until we got this thing passed. And here I am in the 104th Congress, and I hope this time we will be successful. I am getting lockjaw from keeping my teeth locked onto this issue. I would like to release that grip, send it to the President, get it signed into law, and move on to some other legislation.

Now, the bill before us today recognizes the principles upon which we have operated. The bill, I think, is a reasonable compromise that grants States and local communities the authority that they need to plan for their own needs, to say "no" to out-of-State trash. It recognizes the problems of exporting States, and it gives them methods and ways in which to reduce significantly the amount of trash they send out of State. It balances a lot of different needs. As has been described here, it deals with flow control and ground water monitoring.

The heart and soul of this bill, however, is the question of interstate trash shipment. We are working now on some areas of the bill that we feel may need some adjustment, as it has come out of committee. There are negotiations underway, and I trust they will be successful and will allow us to avoid offering some amendments to clarify some of these provisions.

We will talk a little bit more about that later.

Mr. CHAFEE. I wonder if I can ask a question.

Mr. COATS. I yield to the Senator.

Mr. CHAFEE. First, I want to confirm that indeed the Senator has sunk his teeth and jaws deep into this issue. I will second everything he said about his determination on this whole project. He has been at it for, I guess, 5, 6 years, whatever.

Mr. COATS. Six years.

Mr. CHAFEE. The Senator mentioned he had some amendments which I guess he is going to discuss now.

Mr. COATS. Actually, I plan to defer discussion of those amendments now because we are in negotiation with the Senator from Rhode Island, and other Senators of affected States, to try to

reach a resolution on these amendments, which we can hopefully put into a package that would be acceptable and offer them as a package rather than as individual amendments. So I would be premature in offering those amendments at this particular time.

Mr. CHAFEE. I am caught in kind of a bind in that I want to be here when the Senator makes his remarks and offers his amendment. But I may have to step out for a minute or two. Who is working with the Senator in connection with his amendments? You mentioned "we." Is it several of you?

Mr. COATS. I say to the Senator from Rhode Island that it is virtually all of the affected parties, both from the exporting States as well as the importing States that are working together to try to resolve these issues.

Mr. CHAFEE. Fine.

Mr. COATS. I will not bring up any amendments in the immediate time period ahead of us here, and certainly the Senator will have an opportunity to leave the floor.

Mr. CHAFEE. OK. Because there is going to come a time when we are going to want amendments brought forward. If the Senator feels he is not quite ready, we will try and complete any negotiations. As the leader has indicated, he wants to finish this bill by the end of the week. My hope is that we can finish it tomorrow. So we will work with your folks and see if we cannot come to some conclusion at least by the time we go to work tomorrow.

Mr. COATS. I appreciate that very much. Obviously, the Senator's cooperation and input is necessary for this. I am anxious, also, to move forward on this. I would be delighted if we can finish this bill tomorrow and not have to carry it over until Friday. We are working as we speak on this matter and hope to have some answer to the Senator shortly.

Mr. CHAFEE. I thank the Senator.

Mr. COATS. In conclusion, Mr. President, let me just say that we have tried several approaches. We have tried the path of patience. We have waited our turn and bided our time. We have agreed to continue to accept some levels of out-of-State waste in exchange for having realistic controls over how much waste we will receive from other States. There is simply no other way for States to realistically plan for their own future capacity, unless we can enact legislation that gives them the authority to regulate the volume of out-of-State trash which that State receives.

The problem here is very basic. There is no negotiation; there is no arm's length or both-parties-at-the-table negotiation that takes place, because States are virtually powerless to sit at the table with the exporters and sit down and say, let us establish some reasonable volumes, let us make sure that we have the capacity to receive what you are sending in; let us negotiate the fees on which this will be shipped back and forth; let us determine the terms of the contract.

Because of the Constitution's commerce clause, it is possible—and it is a practice that has been used over and over again—for someone outside the State, or even inside the State, to purchase a landfill and suddenly open up that landfill, which was designed originally for local needs, to massive volumes of out-of-State trash, which fills up the landfill in a very short period of time and leaves the local citizens few, if any, alternatives. In fact, it forces them to ship their waste out of State in order to find a place to dispose of it.

So we end up with a game of pass the trash. Everybody is passing it on down the highway, generally from east to west. Not always. Metropolitan areas to rural areas, across State lines, it is pass the trash.

As the landfills get filled up, no new ones get built, no new efforts put in place to dispose of out-of-State waste, to reduce the amount, to recycle, to reduce the amount generated initially, to find other ways to dispose of the waste. So we just are moving it around the country to different locations, filling up the cheapest hole in the ground that is available for a certain fee for out-of-State trash.

In the 5 years that Congress has debated the issue, the trucks continue to roll. The garbage continues to mount. The changes that we are proposing here are not an attack on any particular State. They are a defense of our own States. They are not rooted in bitterness, but they are rooted in urgent need.

Again, I want to commend my colleagues on the Environmental Committee for moving expeditiously in this new Congress on this legislation. I look forward to working with them, to strengthening the bill to ensure that we afford real protection to importing States while allowing exporters sufficient time to get their house in order.

That is our goal, Mr. President. I am confident that we can accomplish that goal in the time that we have in the next day or two. I am very, very hopeful that within 48 hours or so we will be able to report that the U.S. Senate has, once again, taken action to deal with this problem and that we will work carefully and closely with the House of Representatives, which in my understanding is moving forward on this expeditiously also, and finally resolve this issue and send the legislation to the President's desk for his signature, which in the past he has indicated he will sign.

Mr. President I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. 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. LAUTENBERG. Mr. President, I take to the floor to discuss the provisions of S. 534, the legislation to address the issue of interstate transportation waste and flow control authority. Very often when one mentions flow control authority, I sense that heads begin to drop because of the rather arcane subject but a very important one.

If I can just take a moment to say that flow control—and perhaps it has been discussed on the floor and I missed it but I think the importance of the issue will bear some repetition—gives the States the ability to control the flow of household trash, particularly trash within State borders. And while that does not sound like very much to ask, the fact is that demands are being placed on external facilities' availability so that it can simply be trucked, often out-of-State to other States, where in many cases there is an objection to receiving volumes of trash. Though there was a Supreme Court case decision not too long ago that dealt with this and said you cannot stop this, it directs the Congress to resolve the problem and allowed the parameters under which they were to operate to do just that.

So if it begins to inhibit the trucking or the transportation of waste outside the State, then within a State, they have to have some way of controlling where it goes. Again, though the subject seems a bit arcane, the fact is that it has enormous influence on States like my own who are trying to resolve the need, the ability to deal with their waste in an orderly fashion.

Without significant changes to S. 534, my State is going to experience a severe financial crisis precipitated by the Senate's failure to delegate waste management decisions to the States. I am hoping through the amendment process that we can improve the bill so that States can continue to handle their waste the way they deem appropriate.

Title I of the legislation, which addresses interstate restrictions, which I was talking about earlier, is essentially identical. Title I of S. 2345, which was approved by the Senate Environment and Public Works Committee last year, overturns the decision of the Supreme Court in the case of New Jersey versus Philadelphia. The Supreme Court's decision said that interstate restrictions are unconstitutional because a State cannot discriminate against a commodity—in this case out-of-State trash—from being transported. The court said that States cannot give unfair competitive disadvantage against out-of-State haulers, those who are trucking the material from one State to the other who are out of State, for example, Pennsylvania to New Jersey,

who want to dispose of trash where it makes the most economic sense.

So the first title will allow the Governors in each State to restrict imports of trash into their States. I have supported this title in the past and will support it in the future if States are given the authority to find an alternative to this obstructive commerce to find in State solutions that now out-of-State exports would restrict.

Unfortunately, S. 534, while giving States new power over interstate shipment of waste, actually reduces the authority that they have enjoyed within a State to properly handle their waste. That is a principal problem that I have with title II of S. 534, the title that deals with flow control authority within the State. Once again, I will take a moment to explain why States use flow control.

Congress passed the Resource Conservation and Recovery Act in 1976. The acronym is RCRA. RCRA made standards and improved solid waste disposal methods and practices. Under subtitle (d) of that law, State and local governments developed comprehensive waste management plans that meet minimum standards that are set by EPA. Although the law created national standards imposed through the solid waste management plans, Congress recognized that solid waste was a problem traditionally managed at the local level. Under the philosophy of local control, subtitle (d) gave State and local governments the flexibility they needed to determine the best way to meet the national standards.

In response to the Federal mandate that waste should be disposed of in an environmentally sound manner, it is hard to disagree with that. Many local governments constructed modern, state-of-the-art recycling systems, waste-to-energy facilities, and sanitary landfills. Integrated waste management systems were implemented to promote recycling, consumer education and proper management and disposal of household hazardous waste.

While necessary and desirable, these facilities were also very costly. The Federal Government does not share the cost of municipal solid waste management disposal at the State and local level. States and local governments, therefore, adopted various means to finance municipal solid waste management services and facilities. The general approach taken by State and local government was to issue revenue bonds. These bonds were secured by long-term contractual promises which rely on a steady, dependable, and consistent quantity of waste for disposal in new facilities. It was their revenue streams, necessary to pay off the bonds and to meet the financial obligations, that were incurred in financing these facilities. To ensure guaranteed quantities of waste, cities and towns enact laws requiring that trash generated within their borders be disposed of in these recently financed facilities. Those laws are the ones we commonly call flow control laws.

Now, these flow control laws were consistent with Congress' instruction in subtitle D that State and local governments endeavor to secure long-term contracts for supplying resource recovery facilities and other environmentally responsible waste disposal facilities. It is also consistent with several courts of appeal and State supreme court decisions. However, on May 16, 1994, the legal basis for flow control was overturned by the Supreme Court in the case of Carbone versus Clarkstown. In the 6-to-3 decision, the U.S. Supreme Court ruled that a New York municipality could not require that garbage generated in the locality be sent to a designated waste management facility.

And again, though the language is common, I think it is important to understand what the outcome was, that is, if a community suddenly elected to abandon its responsibility to provide trash for a disposal facility, then it left that facility, already financed, with insufficient resources, insufficient revenues to continue to meet the financial obligations, as well as keeping the facility operating. They had a choice in many cases. They could ship it out of State. But interstate commerce, as we now know it, looks as if it is going to be obstructed by the first part of the law being proposed here, the bill that is before the Senate.

The Court held that the Clarkstown, NY, flow control ordinance interfered with interstate commerce and deprived out-of-State firms access to the local trash market. Again, out-of-State firms are those that cart the material to landfills that are licensed in other States.

As in the New Jersey versus Philadelphia case, States could not discriminate against out-of-State haulers. In other words, if New Jersey did not want that garbage, that trash brought into their State, it would have been a violation of law, so said the Court in the case of New Jersey versus Philadelphia.

The Court held that since Congress had not specifically delegated this power to the States, these flow control laws violated the interstate commerce clause of the Constitution.

The May 1994 decision in Carbone invalidated the historic right of local and State governments to manage solid waste. The case overturned almost 20 years of sound solid waste management policy and is jeopardizing the solid waste management systems of the over 40 States that rely on flow control authority to manage their solid waste.

The Carbone decision makes it difficult for cities to guarantee a steady stream of waste to disposal and processing facilities. Without this guaranteed steady stream of revenues, it will be virtually impossible for the communities to get financing to build solid waste management facilities.

Second, this decision could result in localities losing the revenue generated by having garbage sent to municipal disposal facilities.

This would eliminate their ability to subsidize nonprofitable waste management activities such as recycling and household hazardous waste programs, which have been very effective in many communities, especially in New Jersey. As we have seen in the District of Columbia, the loss of flow control authority threatens existing recycling programs. This article, entitled "District to Suspend Curbside Recycling," from the Washington Post of April 12, about a month ago, clearly makes the case that private haulers taking trash to out-of-State locations to avoid the recycling fees led to this financial crisis.

Finally, the Supreme Court decision puts existing bonds used to finance waste management facilities at risk. If localities cannot send an adequate level of garbage to a facility to generate the revenue needed to pay off the bonds, those communities face default. Citizens in the affected communities could find the possibility of extraordinarily high taxes and the inability to go to the financial markets for any of their needs.

The Public Securities Association estimates that $23 billion of bonds are in jeopardy because of the Carbone decision and every citizen, every taxpayer in almost every State, has to worry about this because suddenly they could be faced with having to make up the revenue that is lost as a result of the decision to ship the material out of State because there is no flow control on this.

In last year's bill, in difficult negotiations with importing States, exporting States, and the waste industry, accommodation was reached. S. 2345 overturned both the Philadelphia case and the Carbone case. It recognized that trash was a local issue and one where States should make the rules, not the Supreme Court and not the Congress.

Some amendments were made to assure the maximum amount of competition was included in any flow control program, competition between simply shipping it out of State and the need to furnish the local facility with appropriate revenue opportunities. Certain restrictions were placed on Governors' ability to overturn existing contractual relationships. Because of concerns of the waste industry, flow control could not be expanded to States that had not used it before the Carbone decision. Unfortunately, at the last minute, the bill failed to win unanimous support.

Instead of starting from last year's compromise, this year's bill goes in two different directions. Almost identical to last year's bill, Governors are

given the power to shop interstate shipment of waste. However, the bill goes in the other direction as far as waste within States. Title II, the flow control title, only allows existing flow control where default is likely. The title is based on the philosophy that flow control is wrong and anticompetitive, and that protection should be provided for only those communities that are in immediate financial jeopardy because of the Supreme Court decision in Carbone.

Title I, the interstate title, discriminates against free market solutions by allowing States to say no to economically viable interstate shipments. Title II, however, attempts to enshrine the free market by preventing States from considering long-term social goals in addition to short-term economic benefits. Indeed, in its present form, I find the bill internally inconsistent. Without flow control authority denied to them in title II, States will find it more difficult to meet the self-sufficiency goal that is virtually required by title I. Title II says turn waste control over to free enterprise. It sounds like a good idea. However, title I says if you do allow free enterprise to take over, other States can close the market to you. It is a catch-22 situation.

It is interesting to note that additional amendments are expected to further limit the free flow of trash over State lines. Title I, the interstate restriction title, gives new powers that conflict with the interstate commerce clause to Governors that they have not enjoyed since the Philadelphia case was decided in 1972. Title II takes powers away from the States and municipalities that they enjoyed since the 1970's, powers that they have used to keep the trash flowing within their States to local facilities.

My colleague from New Hampshire, the chairman of the subcommittee on Superfund, philosophically believes that flow control is wrong, and I understand his position. But his position conflicts with a concern of my Governor and many Governors who believe that, after the last election, more authority would be put in their hands rather than in the hands of Congress.

Limiting the bill as the sponsors have intended has not been easy.

Since flow control has been a tool to solve the waste disposal problems, the States and towns across America have been a laboratory of unique and creative solutions to their waste problems. These non Federal solutions to the waste problem have led to nonuniform statutes and nonuniform problems that were inadvertently not fixed by S. 534.

At subcommittee markup, over 50 amendments were filed. Changes were accepted to respond to specific problems in five States. Two of those States need additional clarifying language.

A colloquy was entered into for another State and one other State was promised consideration before floor action. These seven State-specific amendments have one thing in common—each of these States are represented by Senators who sit on the Environment and Public Works Committee.

It is a complicated issue. I wish we had been able to resolve these issues before we got to the floor here. But it was necessary to get this bill on the agenda for all kinds of reasons and, as a consequence, we are where we are. But we still have a lot of work to do.

Because many States have delegated waste control authorities to lower levels of government that do not employ Washington counsel, many communities are still reviewing the committee's reported product, still looking at what is being offered. And we always have that from the States when they have an interest or when they have a particular problem with a piece of legislation. They have not had time enough yet to deal with it.

New situations that seem consistent with the intent of the authors but not exactly fitting the language of the bill, are still being discovered.

Mr. President, flow control is not necessary or even preferable for every State. Each State is different. It has its own unique needs. But this bill, as written, is not acceptable by my Governor, Christine Todd Whitman, and neither is it acceptable to many others. As those who have been involved in the flow control discussions over the years, New Jersey has the most sweeping and encompassing system and it has been a success.

In the 1980's, New Jersey's environmental initiatives to close substandard landfills drastically reduced the State's disposal capacity. New Jersey's waste quickly became a burden for other States as the need to export our waste grew.

The high cost and market volatility associated with exporting waste triggered a garbage crisis and strained municipal resources. It was at this time that elected officials of both parties in New Jersey accepted the responsibility to develop a solid waste management system that would provide long-term stability and ultimately, self-sufficiency.

"Self-sufficiency" simply meaning that we could take care of all of our waste disposal needs within our State's borders. It could not happen overnight. We tried to stop it when it came from other places, and we were turned down by the courts. As I have said now several times, we could not stand to have our shifting of material suddenly cut off from other States when now we are an exporter.

It was clear to the State that other States would not accept New Jersey's waste forever and Federal legislation to eliminate waste exports was inevitable. To meet the goal of self-sufficiency, flow control laws have been in place in New Jersey since 1979 and control all of the nonhazardous solid waste in the State. Flow control has been a significant part of New Jersey's ability to build an infrastructure, mostly landfills, to handle the 14 million tons of solid waste requiring disposal annually.

Since 1988, exports of municipal solid waste from New Jersey have decreased 50 percent. If the flow control authority from last year's bill is included in legislation that passes this body, New Jersey will be self-sufficient by the year 2000, only 5 years away.

New Jersey's recycling programs are also dependent on revenues received from use of New Jersey waste management facilities. Today, New Jersey recycles over 53 percent of its waste.

Despite New Jersey's system, it is not a system that leaves out the private sector. The private sector has built and operates most of the waste facilities in the State. Through competitive bidding, the authorities within the State ensure services will be provided at the lowest cost. The collection, transportation, construction of disposal facilities, and their operations, are all services for which bids are sought.

Governor Whitman testified that "every major waste management firm in America, and a laundry list of smaller waste companies, operate in New Jersey today, and we are in the 17th year of a flow control system. That is not a Government monopoly."

Because of New Jersey's unique system where all the wastes are now flow controlled, without additional amendments, a waste crisis will inevitably occur. Once part of our system is no longer flow controlled, wastes will flow out of State.

New, in-state replacement facilities will be impossible to finance or justify economically although the supply of trash will be there, the trash will flow out-of-state. Even BFI, the company leading the fight against flow control, acknowledges that new private facilities in the State would not be practical without flow control, without the ability to direct where this trash flows.

Even without the recycling fees, it is and will continue to be cheaper to dump garbage in a landfill in Pennsylvania or other States than to handle it anywhere in New Jersey. This is appealing, in the short term, for some of the mayors and some of the communities and towns in New Jersey.

But the free market available over the border is subject to governmental closure by title I of this very bill. Without flow control, what is now a decreasing waste problem will again become a garbage crisis. Without flow control, communities will again give their garbage to low-cost haulers and hope it ends up in certified RCRA facilities, as opposed to being dumped

casually someplace in an unlicensed facility that they do not have control over.

Without flow control, communities will select haulers on the basis of only one factor, and that is price. But all of us know that the cheapest alternative is not always the best or the legal one.

Without flow control, we will see more illegal midnight dumping.

Mr. President, to protect my State, I will be offering an amendment to protect the flow control system in existence in New Jersey. With this amendment, I can state that New Jersey will not be sending garbage out-of-state after the year 2000. We just need that window of time to deal with it.

Another alternative is to not fix State problems one by one, but to have a generic fix that was the essence of S. 2345 last year.

Depending on the amendment process we are going to be using in this debate, I will be considering offering such amendment based on that agreement and which I introduced in this Congress as S. 398.

Mr. President, the Governor of New Jersey, Christine Todd Whitman, testified before the committee on this important issue. She said:

> It has been argued by some, and may be said again, that flow control legislation is at odds with the goals and philosophy of the new Congress. The contrary is true. A flow control bill that ensures private sector competition while allowing local governments to make long-term waste management plans is entirely consistent with the goals of this Congress. If Congress denies flow control authority to New Jersey, it essentially mandates that States like Pennsylvania and Ohio take trash from my State, only because land cost in those States are lower than in New Jersey.

Mr. President, the interests of the exporting States and importing States are not in conflict. New Jersey does not want to send its waste out-of-State. It wants to be self-sufficient. But to be self-sufficient, it needs to protect its flow control system and it needs several years to be totally self-sufficient. Without that protection, the fears of the proponents of interstate restrictions, will be realized and wastes will again flow out of states looking for cheap places to send their garbage.

In March of this year, the National Governors unanimously passed a resolution reaffirming a mutual commitment to each State's management of waste within its borders and endorsed the use of flow control in the pursuit of self-sufficiency.

Because title II is so much more restrictive that last year's bill, it will be necessary for New Jersey to send more of its waste out-of-State. Unless title II is corrected, I must strongly oppose the existing title I and any amendments that further limit the State's options of going out of State.

Mr. President, I know that my dissertation just now does not compare with some of the most important declarations delivered on the floor of the U.S. Senate nor in this great city of Washington. However, without trivializing the problem, I just want to make the case once more that it cannot exist both ways: We cannot say to the States you are not allowed to control the flow of trash within your State and, on the other hand, face the very high risk of having a law created that says, "Uh-uh, you can't ship it to my State or any other State that now or in the future may import trash."

So we have to arrive at a balance. That is what I have been saying through that flood of words that I have been issuing for the last 25 minutes or so. The subject is not an easy one. It is not a pleasant one. Garbage never is. But the fact of the matter is that it is our garbage and it is our problem and there is not a State exempt from the problem. Today's importer may be tomorrow's exporter, which we bitterly discovered in the State of New Jersey over 23 years ago.

So I hope that my colleagues in the Senate will comply with our request to give the States the authority that they need to handle their garbage within the State with the same authority they will have to keep waste out of their States.

With that, I yield the floor, and 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. LAUTENBERG. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

PRIVILEGE OF THE FLOOR

Mr. LAUTENBERG. Mr. President, I promise there will not be a second speech similar to the one I just delivered. This is a simple request, Mr. President. And that is, I ask unanimous consent that Douglas Johnson, of Senator WELLSTONE's office, and Jill Schneiderman, of Senator DASCHLE's office, be given the privilege of the floor during the consideration of S. 534.

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

Mr. LAUTENBERG. I thank the Chair. I yield the floor and 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.

Mr. DOLE. Mr. President, first, I remind my colleagues on both sides of the aisle that S. 770 is still at the desk and will be there until the close of business today. If colleagues on either side are interested in cosponsoring the bill which would ultimately move the embassy in Israel from Tel Aviv to Jerusalem, we hope you will take advantage and cosponsor the measure.

Second, we are on the Interstate Transportation of Municipal Solid Waste Act of 1995, and we have not been on it long, only since about 1 o'clock. I know a lot of good opening statements have been made. I understand there are a lot of amendments. I urge my colleagues who may not be on the floor, or their staffs who may be listening in their offices, if Members have amendments, we would like to have some votes here this afternoon. We would like to keep this bill moving.

I am tempted to file cloture on the whole bill this afternoon and have a cloture vote on Friday. I would rather not do that. I would rather have Members come to the floor and offer their amendments. But I am certain the managers are here and they are prepared to do business. I know there is one amendment under discussion now. I have heard there are dozens and dozens of amendments. If we are going to complete action on this bill by Friday, we need to move quickly.

I say to all of my colleagues that if you have an amendment, come to the floor and let us enter into a time agreement of 30, 40 minutes, whatever, and dispose of some of these amendments this afternoon. Senator SMITH is here, Senator CHAFEE is here, Senator BAUCUS has been here, so I think you are prepared to do business, right?

Mr. SMITH. Yes. If the majority leader will yield, the majority leader is correct. I think if the bill does not get completed this week because these amendments do not get offered, they are jeopardizing the things we are trying to accomplish. We are here, and if those who have amendments get them here, we can finish this by this week.

Mr. DOLE. We may be on the budget resolution as early as Tuesday of next week. So the window is not very broad here. This is important legislation that affects everybody all over the country. Tonight we cannot stay in as late as I would like to because we have the Senate spouses annual dinner this evening. We will have to probably stop about 7. So tomorrow night we can go late and late Friday afternoon.

I urge my colleagues again to cooperate and help us move the business of the Senate so that we can move on to something else.

Mr. WELLSTONE. Mr. President, I wanted to say to the majority leader and to the managers that I appreciate wanting to move forward. We are trying to work out something on an amendment right now. I think it is an important piece of legislation. I hope we are close.

I yield the floor.

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

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

AMENDMENT NO. 750

(Purpose: To clarify the continuation of flow control authority where such authority was imposed prior to May 15, 1994)

Mr. WELLSTONE. Mr. President, I thank the Senator from West Virginia for being kind enough to defer to me. I am hoping that we will be able to go forward with an amendment, if we can do it in a very brief period of time. I asked the Senator from West Virginia for his permission to do so. I will wait for a moment, if the Senator would be patient.

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

The PRESIDING OFFICER (Mr. JEFFORDS). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 750.

Mr. WELLSTONE. I ask unanimous consent further reading be dispensed with.

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

The amendment is as follows:

On page 56, line 10, strike "is imposed" and insert "had been exercised prior to May 15, 1994, and was being implemented on May 15, 1994,".

On page 56, line 12, insert ";" after "subdivision" and strike "in effect on May 15, 1994".

On page 60, lines 4-5, strike "was in effect prior to" and insert "such authority was imposed prior to May 15, 1994 and was being implemented on".

Mr. WELLSTONE. Mr. President, I rise today to speak to a subject that is of the greatest importance to many communities in my State of Minnesota, and indeed to communities across the country.

The topic is flow control, and particularly as it relates to S. 534, the Interstate Transportation of Municipal Solid Waste Act of 1995. For those Senators who may not be familiar with the subject of flow control—although you are likely to be very familiar with it once we all finish with this bill—you should take a moment and talk to the people in your communities who are responsible every day of the week for picking up the trash, finding a way to dispose of it, and doing so in an affordable and ecologically sound manner. People like Mr. Rob Dunnette, the plant manager at the Olmstead County Waste-To-Energy facility in Rochester, MN.

Mr. President, in 1980 my State of Minnesota, the cost of disposing of solid wastes in municipal landfills was on the rise * * * and the amount of available landfill space was on the decline. "At that time," says Mr. Dunnette, "our landfills were filling up, and there was a lot of material going into landfills that shouldn't have." The Minnesota State legislature responded by passing the Solid Waste Management Act of 1980, an act which sought to give local communities the tools they needed to deal with the landfill problem. One of those tools was the ability to take on for themselves the authority to control the flow of municipal solid waste. Says Mr. Dunnette, "The Feds and the State told us to do something different, do something better * * * so we did."

Mr. President, what Olmstead County did was to adopt flow control. It obtained $27 million in municipal bonds for the construction of three disposal facilities—one for hazardous waste, one for recyclables, and one to convert the remaining solid waste into steam, which was used to heat neighboring buildings and generate electricity.

The entire plan was based on what the State and Federal Government had been encouraging communities to do for years—namely, to adopt flow control authority to integrate and consolidate the disposal of municipal solid wastes.

And it worked. In fact because of the many counties—like Olmstead County—that began to engage in flow control, my State of Minnesota became a national example of how flow control could be an effective tool in managing our local solid waste streams in an economically and ecologically sound manner.

That is until May 15, 1994, when the U.S. Supreme Court ruled that flow control authority was unconstitutional unless explicitly granted by Congress. This is largely why all of us are here on the floor today, talking about flow control.

Mr. President, the issue is simple. The bill before us today, as it is written, excludes many Minnesota communities that have floated millions of dollars in municipal bonds to build facilities under the presumption that they could engage in flow control. But there is a solution to this problem.

Mr. President, I have prepared an amendment, which would ensure that all of the Minnesota counties that had engaged in flow control and had invested money into facilities would be allowed to continue doing so. It clears up a possible misunderstanding, and I thank my colleagues for accepting it.

Let us be clear: My amendment would not authorize flow control for any new communities. Some communities have had good experience with it; clearly, however, it is not right for everyone. What I am saying is that this is a decision that should not be made here in Washington, but rather in the communities directly affected.

My amendment would not require anybody to use flow control. It would only allow those that had been encouraged to engage in flow control since 1980 by the State and Federal Governments, to continue to do so. However without my amendment, millions upon millions of dollars in municipal bonds in Minnesota could be put at risk. As Mr. Dunnette said, "We're 8 years into our 20-year bond * * * without this fix, it is possible, if not probable, that we may default on those bonds."

Mr. President, it is as simple as that. If ever there was a clear example of a States-rights issue, this is it. We need to address this issue now, but we need to do so in a manner that is responsive to our communities. Our communities are telling us loud and clear what they need. I hope my colleagues will listen to them.

Mr. President, this is an amendment that really just clears up a possible misunderstanding. I thank the Senator from Rhode Island, the Senator from Montana, and the Senator from New Hampshire for accepting this amendment.

This amendment makes it clear that when a county has gone forward with its own flow control, has bonded, and is implementing this, that they clearly will be covered by this bill. I believe the managers have accepted this amendment.

Mr. CHAFEE. Mr. President, the Senator from Minnesota is correct, this is acceptable to this side.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 750) was agreed to.

Mr. CHAFEE. I move to reconsider the vote.

The PRESIDING OFFICER. The Chair, in his capacity as a Senator from Vermont, makes a motion to lay that amendment on the table.

The motion to table is agreed to.

Mr. WELLSTONE. Mr. President, I again would like to thank my colleagues.

This was, for a good many counties in Minnesota, a very, very important question. For all Senators, whether Democrats or Republicans, it always feels good to come through for people in your State. I worked hard at this. I thank my colleagues for their cooperation. I yield the floor.

UNITED STATES ACTION ON JAPAN TRADE

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

Mr. President, our United States Trade Representative, Ambassador Kantor, this morning announced a pair of initiatives regarding our trade relations with Japan for which he is to be commended and which deserve the strong support of this body.

With respect to the first initiative, Ambassador Kantor has announced a plan to impose trade sanctions under section 301 of the Trade Act, pursuant to an investigation into the Japanese auto parts aftermarket. On this issue, this body has already spoken decisively by agreeing to a resolution offered on yesterday by the two leaders and myself, and the vote was 88–8. The Senate, thereby, decisively supports the imposition of such sanctions, given the complete unwillingness of the Japanese to address their market closing practices which block access of the United States parts to Japanese consumers. This has resulted in persistent, large trade deficits which are unfair to our industries and cost tens of thousands of jobs every day.

The Trade Representative is on solid ground to publish a proposed retaliation list under section 301.

Regarding the second initiative, the Trade Representative has also announced his intention to take a broad case against Japan's automotive practices before the World Trade Organization [WTO] by invoking the dispute settlement mechanism. As stated in his letter to the new Director General of the WTO, the case will be based on the fact that "Japan has failed to carry out its obligations under the WTO" and thereby "nullified and impaired benefits accrued to the United States under the WTO", and "impedes the attainment of important objectives of the GATT and the WTO."

As my colleagues are aware, in the debate last December over America's accession to the new WTO system, the question of the impact on United States sovereignty by creating binding decisionmaking dispute settlement bodies in that organization was discussed. In fact, it seems clear that some other nations were quick to sign up to the WTO, specifically in order to attack United States trade laws.

In testimony before the Senate Finance Committee today, a former United States trade negotiator, Alan Wolff, stated with respect to the context of negotiations creating the WTO,

> Our negotiators should have begun to recognize that there was something suspect about the U.S. proposal for an automatically binding system when the rest of the parties to the negotiation made an about face and embraced it. They thought that they were curbing America's ability to act under section 301.

So, some opinion has been expressed that it would be risky to go before the WTO in that a dispute settlement panel could rule against United States 301 action in imposing new retaliatory tariffs on Japanese products.

But the question is, what is in the national interest of the United States? Let us keep our eye on the ball. The case of Japanese discrimination on a very persistent and massive scale has been clear for many years in the automotive market as well as in other markets. No serious person can take issue with this.

I commend the approach taken by Ambassador Kantor. There should be a good case against Japanese automotive industry barriers before the WTO because they are so overwhelming—Japanese practices overwhelm tariff schedules and make them irrelevant to the real dynamics of the market. If there is not a winnable case, I, for one, would suspect something deeply flawed with WTO decisionmaking and not the United States' case. Let me say that again: If there is not a winnable case, then I, for one, would suspect something deeply flawed with the World Trade Organization decisionmaking and not something flawed about the United States' case.

The U.S. Trade Representative has maintained consistently that the operation of section 301 as a bilateral mechanism regarding specific barriers and practices is completely appropriate at the same time that we also attempt to breathe life into the new WTO dispute system. WTO rules do not cover the complete range of barriers that are practiced by the Japanese and, therefore, 301 treatment is totally appropriate in many instances. Furthermore, as a general matter, it certainly appears reasonable to believe that if Japanese practices nullify the value to be gained from the tariff-lowering regime of the GATT, then the United States should prevail in a World Trade Organization dispute.

The Trade Representative has established a two-track approach taking the initiative before the WTO and exercising our bilateral rights under our trade law. I do not see any inconsistency in this approach. It is the right approach because our practices in our market are transparent and open, while Japan's practices are not. Thus, it is a fair challenge to the WTO to recognize and act on the reality of the market situation.

Mr. President, I ask unanimous consent to have printed in the RECORD the letter sent yesterday from Ambassador Kantor to the new Director General of the WTO, Mr. Renato Ruggerio, which gives prefiling notification of the intention of the United States to initiate a WTO challenge against Japanese automotive discrimination. In addition, I also ask unanimous consent to include an op-ed piece from today's Washington Post by the vice chairman of the Chrysler Corp., Mr. Thomas G. Denomme, outlining in detail problems that Chrysler has experienced in attempting to break into the Japanese market.

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

EXECUTIVE OFFICE OF THE PRESIDENT,
U.S. TRADE REPRESENTATIVE,
Washington, DC.

RENATO RUGGIERO,
Director-General, World Trade Organization, Geneva, Switzerland.

DEAR DIRECTOR-GENERAL: I am writing you today to give pre-filing notification of the intention of the United States to invoke the dispute settlement mechanism of the WTO to challenge the discrimination against United States and other competitive foreign products in the market for automobiles and automotive parts in Japan. It is our intention to officially file a case with the World Trade Organization (WTO) in approximately 45 days.

Through its actions and inactions with respect to the automotive sector, Japan has failed to carry out its obligations under the WTO, has nullified and impaired benefits accruing to the United States under the WTO, and has fostered a situation in the automotive sector that nullifies and impairs such benefits, and impedes the attainment of important objectives of the GATT and the WTO.

The market access problems in the automotive sector reflect problems endemic in many sectors in Japan. Relative to gross domestic product, Japan imports far fewer manufactured goods than any other G–7 country and maintains a persistent surplus in its global trade and current accounts. Japan's imports of manufactured goods are one-fifth to one-tenth the level of European countries and nearly one-third the level of the United States, relative to GDP. Overregulation, toleration of market restrictive practices and market structures, and pervasive and unwarranted intervention in the Japanese economy all work together to systematically discriminate against foreign competitive imports.

The United States has focussed on the automotive sector because of its central importance to the United States and other economies, and its huge contribution to the U.S.-Japan trade imbalance. This sector accounts for almost 5 percent of the U.S. GDP, and it directly provides jobs for 2.5 million Americans. The 1994 U.S.-Japan trade imbalance in the automotive sector was $37 billion, nearly 60 percent of the total U.S. trade deficit with Japan and nearly a quarter of the entire U.S. global trade deficit.

This trade imbalance reflects a lack of access for foreign autos and auto parts to the Japanese market for the past 35 years. In Japan today, foreign automobiles have a 4.6 percent share of the market. In the United States, foreign autos occupy a 32.5 percent share of the market. Throughout the rest of the G–7, foreign cars range from 33 to 55 percent of the market. In Japan, foreign auto parts account for only 2.6 percent of the market. In the United States, foreign parts make up 35 percent of the market. Throughout the rest of the G–7, the market share of foreign parts ranges from 16 to 60 percent.

While we are first and foremost concerned about the impact of Japan's automotive barriers and restrictive practices on the interests of U.S. companies and workers, this is a general international economic problem, adversely affecting the interests of many trading nations. Japan's huge trade imbalances in the automotive sector contribute substantially to unstable international economic conditions which undermine global economic recovery and growth, and the health of the international trading system.

The Government of Japan in the past implemented measures to protect the domestic

automobile industry, such as discriminatory allocation of capital, foreign investment restrictions, high tariffs, and a range of other measures. As these barriers were removed and as tariffs were reduced through multilateral tariff negotiations, the Government of Japan developed other measures to protect domestic producers from foreign competition. Such measures included, among others, excessively burdensome inspection requirements for imported vehicles, discriminatory access to vehicle registration data, and maintaining an unreasonably complex system of motor vehicle inspection and repair regulations.

At the same time, the Japanese automotive sector as it has developed has been pervasively characterized by close interlocking relationships between auto manufacturers, suppliers, distributors, dealers, and those who repair and inspect cars. The Government of Japan has guided or tolerated the creation by industry of informal market restrictive measures and market structures, which have placed a critical role in excluding foreign competitive suppliers of autos and auto parts from the market.

Foreign motor vehicle manufacturers now face a situation in which limited access to auto dealerships—which until recently were prohibited from carrying products from competing suppliers and which still fear that carrying a competitor's products will damage their relationship with their current supplier—seriously impedes market access. In addition, foreign auto parts suppliers find it virtually impossible to sell high value-added parts to Japanese manufacturers.

In the auto parts aftermarket, excessive and complex regulations channel most repairs to garages tied closely to Japanese parts manufacturers, which results in market discrimination. While we are very conscious of the need for any country to establish regulations pertaining to safety and the environment, the Japanese regulations in the aftermarket go far beyond what is necessary to protect those interests, and are applied with the effect of creating unnecessary obstacles to international trade. Japan has chosen to create and maintain a regulatory system which effectively locks out foreign competitors and imposes extraordinary additional costs on Japanese consumers. According to our estimates, Japan's 34 million households would save $24 billion annually from deregulation of the auto parts aftermarket.

As you are aware, the United States and Japan have been discussing measures to substantially increase access and sales of foreign competitive autos and auto parts in the Japanese market. After long negotiations, the United States and Japan have been unable to reach agreement regarding any of the three principal areas—access and sales of motor vehicles, original equipment parts, and replacement parts—that are crucial to a meaningful solution.

I have directed a task force of lawyers and economists to ready our case for submission to the WTO. I must underline the seriousness of our intentions in this matter.

Yours sincerely,

MICHAEL KANTOR.

JAPAN: ONE-WAY TRADE TACTICS

U.S. Trade Ambassador Mickey Kantor is currently toe to toe with the Japanese in the most contentious trade negotiations to date. The aim is to open Japan to American vehicles and parts. Agreements have been reached in theory to open Japan to foreign insurance, medical equipment, telecommunications equipment and glass. But the toughest and most important sector—automotive—remains unresolved.

The total American trade deficit with Japan last year was $66 billion, and 60 percent of that—more than $36 billion—was in auto trade alone. We can't fix the trade gap with Japan unless we fix the auto sector. And make no mistake, the Japanese domestic industry is virtually closed to foreigners and will remain closed unless we, as a nation, force them to open it. Here are just a few facts:

American companies have sold 400,000 vehicles in Japan in the past 25 years. Japanese companies have sold 40 million in this country. Japanese consumers bought 6.5 million vehicles last year. Only 301,391 were imported—less than 5 percent of the market. We project that Big Three sales in Japan will increase this year by about 12,000 vehicles. Japan ships that many to the United States every three days. The Japanese auto parts market is worth $107 billion per year. America's world-class suppliers have less than 2 percent of that business, even with the weakest dollar since World War II.

Japan does not play by the same rule book as Western nations. It is a closed, mercantilistic society with government and business working hand in hand to prevent any serious foreign competition in the home market, while waging an economic war of conquest in overseas markets. With the second-largest economy in the world, Japan is simply too big and too important for such behavior to be tolerated. It also sends the wrong message to newly developing economies that one-way trade is an acceptable model to follow. It is time for the Japanese traders to grow up and act like responsible economic adults in the world trading system. That system is based on reciprocity. You can sell to us if we can sell to you.

Totally free trade has always been a textbook theory. It has never existed in reality. However, when a major trading nation consistently and egregiously violates the rules of reciprocity to beggar its neighbors, it can ultimately lead to the collapse of world trade. Other nations eventually find the costs of such violations to their own producers to be too great, and a major trade war develops.

The Japanese or their apologists continually protest that their auto markets are not closed to imports. It's just that we don't try hard enough, or that our vehicles are too big or that the steering wheel is on the wrong side.

It all boils down to an argument that Japanese roads and drivers are unique and unsuited to "foreign" vehicles and parts—just as a Japanese baseball was unique and unsuitable for "foreign" bats, and Japanese snow was unique and unsuitable for "foreign" skis and just as (for 23 years) Japanese stomachs were unique and unsuitable for "foreign" apples. The list is endless, and the arguments are all bunk.

All of the U.S. companies have right-hand-drive vehicles. Chrysler was the first of the Big Three to export a right-hand-drive vehicle from the United States to Japan with the Jeep Cherokee. The sport utility segment is an increasingly popular segment of the Japanese market, just as it is in the United States and Europe. Last year, 197,877 sport utility vehicles were sold in Japan. Chrysler sold 13,208 vehicles in Japan; 12,701 of them were Jeep vehicles. That is an improvement over 1993, but it is still not a level we would expect in an open market. Japanese officials contend that our sales are going through the ceiling. If so, it's a very low ceiling. Those 12,701 Jeep vehicles represented only 6.4 percent of the sport utility market in Japan.

In the United Kingdom, a market we have only recently entered, we captured a 30 percent share of the gasoline-powered sport utility market. Both markets are right-hand drive. Both have domestic sport utility manufacturers. If we had achieved a 30 percent share in Japan, our sales would have totaled 59,363 vehicles in 1994.

Chrysler projects sales in Japan of 20,000 vehicles in 1995. This increase can be attributed to a number of things—favorable exchange rates, competitive pricing on our vehicles (we just lowered our Jeep prices by 10 percent), the popularity of the sport utility segment and, certainly, the current negotiations and pressure by the Clinton administration. History shows that Japan doesn't liberalize entry unless there is a reason to do so.

Last year, Chrysler opened a new office in Tokyo and expanded our staff there. In early 1996 we will introduce a right-hand-drive Grand Cherokee in Japan, followed by a right-hand-drive Neon and, in early 1997, a right-hand-drive version of our new minivan. We are making these substantial commitments of money, time and engineering talent because we are counting on the continued efforts of the U.S. government to expand entry into the Japanese market and other auto markets around the world.

Chrysler is committed to breaking into the Japanese market and will continue to expand our presence there with more products and staff support and by testing the Japanese auto manufacturers' latest message: that Japanese dealers are free to sell whatever vehicles they choose. We will be knocking on dealers' doors, trying to establish broader distribution opportunities for our products. We will provide Japanese dealers with more products and profits. And we will offer the Japanese consumer a wider choice of vehicles.

A trade agreement that provides real access to Japan's vehicle and parts markets is critical, not only to the Big Three and our employees, but to all of the related industries that supply the industry: semiconductors, electronics, steel, aluminum, chemicals, rubber, machine tools and many others. All told, about 1.5 million employees of America's automakers and their suppliers are waiting for Japan to remove its "do not enter" sign.

Regardless of successes in other sectors, the U.S.-Japan framework negotiations will fail both the American producers and the Japanese consumers if the automobile sector is not opened to U.S. vehicles and parts.

Mr. BYRD. Mr. President, I yield the floor.

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

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

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

AMENDMENT NO. 751

Mr. SMITH. Mr. President, we have an amendment offered by Senator

KEMPTHORNE. I send the 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 New Hampshire [Mr. SMITH], for Mr. KEMPTHORNE, proposes an amendment numbered 751.

Mr. SMITH. 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 69, line 13, strike the word, "remote".

On page 69, line 19, after the word, "infeasible", insert the word, "or".

On page 69, lines 21 and 22, strike the words, "the unit shall be exempt from those requirements" and in lieu thereof insert the words, "the State may exempt the unit from some or all of those requirements".

On page 69, line 22, add the following new sentence: "This subsection shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.".

Mr. SMITH. Mr. President, this amendment offered by the Senator from Idaho has been agreed to on both sides.

There is no objection on either side. It is a technical amendment to title III and it deals with ground water monitoring.

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

The amendment (No. 751) was agreed to.

Mr. SMITH. Mr. President, I yield the floor and 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. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The Senator from Rhode Island [Mr. CHAFEE] is recognized.

Mr. CHAFEE. I thank the Chair.

(The remarks of Mr. CHAFEE pertaining to the introduction of S. 786 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. CHAFEE. 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. DEWINE. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Ohio is recognized.

CRIME IN AMERICA

Mr. DEWINE. Mr. President, in the coming weeks the Senate will once again turn to the very important issue of crime. Within the next few days I will be introducing on this floor a crime bill of my own. Over the next 4 days I intend to discuss on each one of those 4 days a different aspect of the crime bill that I will be introducing.

Today, I would like to start by talking about two truly fundamental and basic issues and questions. First, what is the proper role of the Federal Government in fighting crime in this country? Second, despite all of the rhetoric, what really works in law enforcement? What matters? What does not matter? What is rhetoric and what is reality? What can the Federal Government do to help local law enforcement? Because, Mr. President, the fact is that over 90 percent of all criminal investigations, prosecutions, and trials do not occur at the Federal level. Rather, they take place at the local and State level.

This means that one of the criteria for any crime bill has to be the impact that bill will have on the ability of local communities themselves to fight crime. Of any crime bill, we have to ask this question: Does it help or does it hurt the local crimefighters, the men and women who are on the front line every single day? Mr. President, if it does help, does the help it gives help permanently or just over the short run? In other words, are we going to get any lasting impact in our battle against crime for the billions of dollars that we are talking of spending at the Federal level?

Mr. President, the role of the Federal Government first and foremost is to do those things that the local community cannot do for itself. I believe the Federal Government has to provide the tools to a local community to fight crime, tools that they could not have but for the help of the Federal Government.

One major Federal responsibility that I would like to discuss today is the creation and maintenance of a national criminal records system. The idea is really very basic and very simple. We need to make it possible for any police officer anywhere in the country to access a national data base, a fully automated data base, data bank, which includes information on fingerprints, DNA, ballistics, outstanding warrants, and complete criminal record history of suspects and of those who have previously been convicted of crimes.

I believe that this system will be an absolutely essential component of local law enforcement in the 21st century. We already have much of this technology in place today, but, quite frankly, it will only become more important in the years ahead. That is why we need to focus on it today, this year, this crime bill. We have to build this system correctly from the beginning.

Mr. President, we will soon be considering the single largest crime fighting bill in the history of this country. If we do not focus on this technology issue now as part of this crime bill, we never will again have the opportunity to do it and to do it correctly. I think that would be tragic, because if we do not do this it will be much more difficult later on for police to fight crime. Conversely, if we do do it, we will solve crimes. We will save people from becoming victims. Yes, we will save lives. I think that really is what is at stake.

Mr. President, if we do not do this now, it will be more difficult for the police to solve crimes committed by the same individual in different cities—to catch, for example, a criminal who used the same gun to commit crimes in both Washington, DC, and Baltimore, MD. It will be more difficult to keep track of sex offenders and to prevent them from repeating their offenses.

Mr. President, when a felon is fleeing from justice and inadvertently falls into the hands of law enforcers in some other jurisdiction, those arresting officers will not know through fingerprints that that person is wanted, let us say, for kidnapping or a terrorist act—kidnapping a child.

Mr. President, when a brave police officer pulls someone over on a deserted highway in the middle of the night, that police officer will not know the kind of person he is pulling over, will not know that the person he has pulled over is a convicted criminal, maybe a fugitive from justice.

Local police work hard and do a great job. They deserve much better than this. They deserve to have the best technology that we can give them.

To do that they need national help. They need the technological backup that only a fully functioning national—national—system can provide. For local law enforcement to get the maximum benefit from a national system, we have to grow this national system locally.

The unique thing about law enforcement in the United States, a country with a Federal system, not a top-down system, of government, is that you can only have a national system if the local law enforcement people build it up themselves. To attempt to create a national system from the top down is like trying to create a TV network if nobody has a television.

We can have all the Federal technology in the world in Washington, DC, but if a police officer in Tennessee or in Ohio or in Massachusetts cannot pull it up in his or her squad car or at the police station, what in the world use is it?

To make a national system, we really need two things. We need the local people to collect data and put it into the

national system. And then we need to make sure the men and women scattered throughout this country, tens of thousands of them, who need this information have the ability to get the data back and to use it and to solve crimes and to convict criminals. Unless we invest in local technology, the local data collection, and retrieval, this just will not happen.

When I was in Cleveland recently, I saw the future of law enforcement. I saw police officers punch a name into a laptop computer, no bigger than this. The computer then gave them a picture of the individual and a lot of other information, including outstanding warrants and a complete criminal record.

We have the technology today to give this ability to every law enforcement officer in the country. For a system like this to work, Mr. President, we need local police all over America to be putting in this information. It is the kind of system we have to grow locally so that it can work nationally. Only the Federal Government can do the national coordination that is necessary for this kind of a system. There is an important and legitimate Federal role in crime technology, and my bill reflects this fact. My bill gives direct assistance to local authorities so that they can contribute their knowledge, their information to a national crime fighting system.

Anyone who visits the laboratories of the FBI, as I have, here in Washington cannot help being impressed by the tremendous capabilities and capacity that they have. Our challenge, though, is to ensure that the hub, the FBI's data base, is both expanded by and is useful to local authorities.

While I was at the FBI headquarters recently, the agents looked me directly in the eye and told me that the awesome technology we have really will not be fully utilized, will not live up to the great potential it has unless the local authorities can collect the information and put it into the system.

They expressed to me quite bluntly a skepticism as to whether or not there are the funds available today in jurisdictions across this country to achieve this type of a national system. They have it here in Washington. The FBI has it. But local law enforcement does not today have the resources.

Talk to the police officers of Lucas County, OH. They will tell you how crucially important access to this technology really is. Let me take one example, something we have heard a lot about in the law the last few months on television— DNA. Let us take DNA in a rape case. The police in Lucas County have the technology to collect blood and semen in a rape scene. Today, however, the Lucas County police, sheriff's office, Toledo Police Department, if they have no suspect, there is no quick way to match the DNA samples from the crime scene against the DNA samples of past offenders because Lucas County is not on line with an existing national DNA data base that might help them determine who the predator really was. And even if they already have a suspect in Lucas County, proving that the DNA matches that of the suspect is a very slow process. It is slow because of the great backlog that exists today in getting these samples fully analyzed by a competent individual, an expert who later on can come into court and testify.

If we give Lucas County or the Toledo Police Department immediate access to a national DNA data base, they could know pretty swiftly who committed that crime.

The same problem exists in regard to fingerprints. Now, when a suspect is booked, generally, his fingers get rolled in ink onto three or four separate cards which then get headings like name, address, et cetera, which are typed by the county sheriff's department onto the cards. These fingerprints are then mailed—mailed, Mr. President—in 1995, still mailed—to the FBI and into BCI in Ohio, which is our Bureau of Criminal Identification.

The technology, though, Mr. President, already exists for the computerized fingerprinting of suspects. All they have to do now is place their hands onto a computer imager—the technology is available today—and the fingerprints go then directly into a data base, what could be a national data base.

That would be a tremendous improvement. But, you know, the folks in Lucas County tell me that what they and other police officers nationwide really need is a national computer linkup for fingerprints.

I think that is absolutely correct. If you look at the technology they are trying, let us say, in Cleveland Heights, laptop computers in a squad car, and if you look at the incredible technology already available for fingerprinting, for matching bullet fragments and other physical evidence, the conclusion is really inescapable. We need to make technology a truly national priority.

This is something that we in the U.S. Senate can do and, frankly, something that we must do. The time is now. This is our opportunity.

The situation today is almost like a system of stereo components. We have a great receiver; we have a great set of speakers; we even have a world-class selection of CD's. But we have not hooked the system up and we have not plugged it in.

Mr. President, make no mistake: America's police men and women are already the best in the world. If we give them this equipment, they will solve the crimes; they will get the job done.

The U.S. Senate needs to give these local police officers the tools they really need. The bill that I will introduce in the next several days will accelerate the process of setting up this system of 21st century technology. We really will be going from 19th century technology, which is how many police carry out their functions today, to 21st century technology.

Only if we do this can the State and local authorities make their crime information readily available to the FBI, the national data base, the Federal Bureau of Investigation here in Washington and, frankly, more importantly, vice versa.

My bill makes it possible for States without technology to come on line. And if a State is already on line with the FBI, that State can use the funds to make further improvements to its data collection system.

Let me give you another example. The combined DNA index system, called CODIS, a data base, includes DNA information on criminals convicted of rape, murder, and other violent crimes. Under my legislation, participation in CODIS will be truly national for the first time, and it will be supported by Federal dollars.

In another area that I think is very important, my bill would require convicted sex offenders and other violent criminals to give blood samples as they enter or as they leave prison so that we can develop a truly national sex offender DNA data base.

Mr. President, there exists in this country a class of individuals who I will call, for want of a better term, sexual predators. A predator, as we know, is an animal that preys on other animals, and typically on the weak—sexual predators.

A recent study, Mr. President, found that 28 percent—28 percent—of convicted sex offenders were later convicted of a second sex offense. I will say, Mr. President, based upon my own experience when I was a county prosecutor in Greene County, that that percentage probably is even higher than 28 percent. That is a very high recidivism rate and it shows how serious a problem we are really up against.

And so it makes eminent sense to develop a nationwide system where we can collect systematically the blood, then the DNA, and develop this national DNA data base for sexual predators. If we do this, we will solve crimes; we will prevent crimes; we will prevent tragedies.

I think, Mr. President, we clearly need to do everything in our power to stop these predators. That is why we need to give police access to this national data base.

Mr. President, fingerprints and criminal histories would also be included in this integrated Federal data base.

In addition, my legislation would allocate some of the crime money to fund the FBI's DRUGFIRE program. This is

an existing program that, quite frankly, needs to be expanded. We need to help the FBI develop and install computer equipment that would match bullet evidence to information in the FBI's bullet data base.

Today, for example, law enforcement officers in my home county of Greene County, OH, have a filing cabinet full of bullets. These bullets are arranged by caliber—9 mm, .38 slugs, and so on.

Every gun, of course, as we know from watching TV shows, leaves a telltale print on a bullet, so police officers in Greene County or any county can take a bullet from the crime scene and compare it to the bullets they have in their bullet file. They take the bullets that look similar and put them under a microscope, quite frankly, in the very distant hope they might get a match.

Tragically, there is absolutely no hope of matching the bullet with bullets from other police departments. That is one reason there are a lot of unsolved gun crimes in this country today.

DRUGFIRE changes this dramatically. DRUGFIRE connects each bullet microscope to a computer, which takes a picture of the bullet and stores an image in its memory. It can then be matched with millions of other bullets from all around the country.

Today, about eight jurisdictions between Baltimore and Washington, DC, are linked up through DRUGFIRE. They have already connected Baltimore crimes to D.C. crimes—the same gun, the same criminals.

Thanks to DRUGFIRE, a search through 10,000 bullets takes about a minute. Without DRUGFIRE, no one knows how long it will take because no one, of course, would even try to do that.

Mr. President, if everyone in local law enforcement were hooked up to each other nationwide, and to the FBI, through DRUGFIRE, they would have a huge new advantage in the fight against criminals with guns. Gun criminals do not respect State borders—very obvious.

Mr. President, a key criterion on which any crime bill should be judged is: Does it do any permanent good? Not just immediately, but does it do permanent good? Does it just spend money, or does it invest in something that has consistent, long-term benefits?

Mr. President, I maintain that the criminal justice records we are talking about—indeed, all the technology we are talking about—are a crucial long-term investment for this country.

We are not really just talking about the next 5 years. We are talking about a cumulative effect, building, building far out into the future. The efficiency of this system will continue to increase each year. It will have truly a cumulative effect.

We want to do for law enforcement, if I could use this analogy, what the interstate highway system did for U.S. transportation back in the 1950's.

Now, I must admit to my colleagues that this is not a glitzy nor a glamorous issue. The first thing I learned, now almost 20 years ago, as a young assistant county prosecuting attorney, was that law enforcement is very seldom glamorous. It is hard work. What we generally see on TV is not an accurate depiction of police investigations. It is not an accurate depiction of criminal prosecutions.

In fact, Mr. President, what we are seeing or we are hearing about, day after day after day, as the FBI and other law enforcement agencies investigate the horrible tragedy in Oklahoma, what we are seeing unfold is typical law enforcement work, just magnified as they go about their business—their hard, tough, sometimes very boring business—of looking for the lead that will take them to the next lead, the piece of evidence, the shred of evidence that will take them to something else, and on and on until the crime is solved.

Good police work is, if I could use this term, Mr. President, largely grunt work. It can be downright boring hitting the pavement day after day to track down leads. The police in Lucas County, OH, spent a good 8 years trying to track down a grandfather who abducted his granddaughter. They followed his trail from State to State. They finally found him, after 8 years, in California.

Mr. President, a national, easily accessible database would have made that capture probably a lot easier and maybe, just maybe, that little girl would have been reunited with her parents a lot sooner than 8 years after her disappearance.

The Oklahoma City bombing case, as I mentioned a moment ago, demonstrates the real value of a usable national database. A scrap of metal that was blown 2 blocks away from the crime scene by the bomb blast had a vehicle identification number on it. The FBI fed the number into the computerized rapid start system. The vehicle identification number then led the FBI to the rental company in Junction City, and that is where they got the description of the suspect.

Then it took more legwork around Junction City to match a name to the suspect. When the suspect's name was fed into the FBI's national computer database, that is how the FBI found that the terrorism suspect actually had been arrested earlier in Perry, OH, that he was actually in custody.

Mr. President, local law enforcement officers really need access to that kind of technology. The measures I am talking about will help provide them with these tools. This technology may not be glamorous—it is not glamorous—but believe me, it matters, it makes a difference. It will make a huge difference in our national fight against crime. Every single time a police officer pulls someone over, we need that police officer to know that America is with him or with her, not just our encouragement, not just our moral support, but we need to back up that by giving that police officer all the relevant facts we as a nation have compiled about that person, that individual that the police officer has just pulled over.

Last year, we started down the right path. Last year's crime bill did provide some money for this important work. But now we have to concentrate on helping the local—the local—law enforcement community to participate. That is what this year's crime bill absolutely must do, because, Mr. President, if we do not do this, we will be missing a major component of our crimefighting arsenal.

It is no use to have a gold-plated database system in Washington if local crimefighters cannot, do not contribute to it and if they cannot draw out the information, if they cannot use it. Again, back to the statistic that I started this speech with and that is that well over 90 percent of all criminal prosecution is, in fact, local. And so, you have to judge the system you are establishing not just by what it does for the FBI, although that is important, you have to judge what it does for its component parts, what it does for the tens of thousands of police officers and law enforcement agencies around this country.

Our challenge, Mr. President, is to prepare America's law enforcement for the 21st century, and we are falling behind in this task. We have the technology, we have the ability to prevent many of the crimes that are being committed today. Think of it, that is in and of itself a crime, that we have the technology to give law enforcement the tools they need to solve crime and to, more importantly, catch criminals and put them behind bars and keep them locked up, criminals who, but for that technology, will continue to go on and continue to commit crimes and continue to prey upon our citizens. We need to get that technology to where it is needed the most, and that is the local law enforcement.

The improvements I am proposing in America's crime information system constitute a basic investment in the security of American families well into the next century. It is time to move out of the stone age on law enforcement. That is the principle behind my crime technology proposals.

I look forward to working on this in our Judiciary Committee process and on the floor of this Senate in the next few weeks. I think the work we do on this truly has the potential to make a major difference in the lives of ordinary Americans for decades to come. I am proud to be a part of this effort.

I yield the floor

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

OPPOSING THE ELIMINATION OF THE DEPARTMENT OF EDUCATION

Mr. KENNEDY. Mr. President, we now have two budget proposals, one from the House of Representatives and one from the Senate. Both claim to balance the budget to ensure a better future for our children, to provide them with more and better opportunities than we now have. Nothing could be further from the truth, if Congress accepts the House Republican proposal to abolish the Department of Education.

You do not turn your back on education in the name of ensuring a better future for our children. You do not turn your back on education to pay for tax cuts for the wealthiest Americans. You do not turn your back on schoolchildren to pay for tax cuts for the wealthiest Americans. You do not turn your back on college students to pay for tax cuts for the wealthiest Americans. And you do not turn your back on working families to pay for tax cuts for the wealthiest Americans.

Education is critical to the Nation's future. It deserves a seat at the Cabinet table and at the President's right hand when critical decisions are being made. Children do not vote, children cannot hire lobbyists, but a Cabinet officer can fight for them. It is especially objectionable that the Department of Education would be abolished in order to pay for a tax cut for the wealthiest individuals and corporations in our country.

What does the proposal to abolish the Department of Education say about Republican priorities? What kind of Nation are we? What kind of Congress are we? Last Congress, Republicans and Democrats stood together as the Education Congress. Are we now the anti-education Congress?

Last Congress, Democrats and Republicans worked together to reform the Head Start Program. Republicans and Democrats worked to bring about changes in the chapter 1 program. We worked together to adopt the Goals 2000 program, the School-to-Work Program, and the direct loan program. These programs were all passed with Republicans and Democrats working together. It truly was an education Congress.

Now we have the proposal to eliminate the Department of Education which is nothing more than a political stunt. It would save less than 2 percent of the Federal investment in education. These budget proposals will not eliminate bureaucracy in education. What these cuts will do is jeopardize billions of dollars in aid to education which go directly to schools and colleges and students to give them a greater opportunity to learn and to succeed.

Mr. President, I have a list of the various education programs targeted by the House Republican budget for elimination. Outlined in these programs are the safe and drug free school State grants and the Safe and Drug Free School National Program. These are the programs that have been developed to try and help local school districts deal with the problems of substance abuse and violence in their schools.

These programs are all targeted for elimination.

Also on the list for elimination is assistance for the magnet schools which have been developed to try to help the public schools to develop magnet concepts to attract the best of the young people in public schools, to give them some advantages and different specialties so they can advance in their educational competence. That program is effectively dropped out.

The dropout prevention programs, demonstration programs which are targeted at some 400,000 young people who drop out of school every year. They are the principal cause of violence in our society and the principal individuals that have the challenges with teenage pregnancy. We have a small program that is having some positive effects, and it is targeted to be eliminated.

The charter school programs. Last year, when we were considering the education reforms, how many of our Republican colleagues said what we need is break-the-mold public schools, we need to permit the States to move ahead with new charter schools? We included charter schools funding in our Goals 2000 proposals. A number of different States are experimenting with those programs. There are funds in there to help and assist local school communities that are trying to develop charter schools. Those programs effectively have been emasculated.

All of the education technology programs. I was listening to my friend and colleague, the Senator from Ohio, talking about the importance of new technologies to fight crime. We heard important testimony today in our Immigration Committee about how we are trying to utilize the best in technology to try to bring sanity into the whole area of employment and the exploitation of illegal immigrants and deal with the problems of the discrimination that exist against Americans in employment, using the best of technology. How is it that we are trying to do the best in technology when we are trying to deal with immigration and we are trying to use the best of technology in talking about the problems of crime? Here we have a modest program to try to bring the latest technology into the public schools of this country, and it is targeted for elimination under the budget recommendations of the House.

In vocational education the tech-prep educational program is the best work-based learning program that has been developed in this country by the private sector and the public sector working together. It is effectively emasculated. It is an effective program. Many of our colleagues know about model tech-prep programs that have taken place in their States. They are small programs, but they really have the pattern for the development of future training programs and partnerships between the public and private sectors. They are effectively emasculated.

The efforts we made last year on the School-to-Work Program which had bipartisan support, and which Republican Governor Thompson testified on before our Human Resource Committee as being an extremely effective program in helping to move many of the young people that are not going on to 4-year colleges or 2-year colleges or post-high-school education and help them gain employment. Sixty-five percent of all the high school students that graduate do not go on to advanced education. They are the ones who are having the difficulty in getting decent jobs. They are the ones who have seen their real income decline over the period of the last 15 to 18 years. They are the ones who are losing confidence in the whole education system and the democratic process and the free enterprise system.

One of the most innovative and creative programs has been the School-to-Work Program, which helps move these young people, in a thoughtful way, in a way that has the strong support and initiation of the private sector, from school right into employment and future job opportunities with good and decent job programs. It has broad bipartisan support and is supported by Republican Governor Thompson, who was down testifying before us, as being one of the creative programs to try to help reach those young people that are not going on to college. Nonetheless, it is a modest program that was started last year. And that program is effectively eliminated.

Mr. President, I could go on. The Star Schools Program brings distance learning into many of the school districts of this country. Many of the school districts have had tightening budgets, and they are not able to get that science teacher, that language teacher, that chemistry teacher, that biology teacher, because of the demographics of their particular community have decreased, school budgets have gone down. But what we have been able to do with the Star Schools Program is to beam into those schools the best educator, the best physics teacher, the best history teacher, the best language teacher, for the very bright students in those schools who otherwise would be unchallenged in terms of their ability to compete in science and other kinds of technology, which this Nation needs

in such desperate amounts. A modest program. It is $30 million, and it is affecting thousands of students, not just in urban areas but in rural areas of the country. The program MCET, in my part of the country, effectively provides distance learning throughout New England. Its greatest supporters are in the rural parts of Maine, New Hampshire, and Vermont—in the rural communities.

You have an exciting program in South Carolina. I have attended programs in Mississippi that have reached out into rural areas all through the South that are teaching children foreign languages, physics, advanced mathematics, and a number of other programs where they do not have those kinds of teachers. It is a modest program that depends upon local support, local matching funds, and it has been an effective program in every kind of evaluation, and it is effectively eliminated and cut.

So, Mr. President, these are matters which we are going to have to have a debate and discussion about when we have the opportunity to debate this matter here on the floor of the U.S. Senate later and also when that conference report comes out.

I urge those who are committed to the cause of education to take a little time and review in detail the assault on many of the programs that have been outlined in the House budget proposal, and a number of those which have been included in the Senate proposal. We have seen the basic assault on the programs which provide for an interest subsidy students while they are in school. That is a program that has been in effect, and that program is effectively being eliminated. In my State of Massachusetts, 70 percent of the students that go to higher education get some form of help, of scholarship help or assistance; 75 to 78 percent of all the scholarship help and assistance is provided by the Federal Government.

The cuts in school-to-work programs proposed in the Republican budget would deny more funds for working families' children in my State of Massachusetts than is being provided by the State today. This is not an issue where the State is going to pick up the slack. I hope that during this debate we will hear from our colleagues in other States and that they will tell us what State has been devoting more and more to higher education for their children. It is not true in Massachusetts.

Tuition and fees in public education have increased dramatically. And that has been true in almost State in the country. And the people that qualify for the student assistance programs are, by definition, the sons and daughters of working families. This is a program that has been tried and tested and true.

I applauded the President of the United States when he talked about trying to provide at least some tuition deduction for working families, up to $10,000, because of the increases in tuition which have taken place in this country. I myself believe we ought to consider permitting the repayment of interest on student loans to be deductible under the Tax Code. Why do we permit the interest that wealthy individuals pay on their second homes to be deductible when we will not permit students to deduct interest payments on their student loans?

That says something about national priorities. Instead of moving in a direction to try and help and assist the sons and daughters of working families, we are moving completely in the opposite direction.

Mr. President, there are many features of those programs which are troublesome. I have mentioned just a few. We are committed to try and consolidate various programs. We made some progress last year in the areas of education. We are doing so now in the training programs. We are working toward those objectives in the Labor and Human Resources Committee.

We welcome the opportunity to do that with our colleagues, to eliminate unnecessary bureaucracy and the overlapping of various programs. I think that makes sense. We welcome the chance to do that.

But kind of wholesale assault on education programs that has been outlined today in the budget by the House of Representatives and the significant undermining of student assistance programs in the Senate, I find to be troublesome and I hope that when the time comes that we will reject those particular areas.

The Republicans claim that these budgets are to give children a better future. Will children have a better future if we revoke our commitment to raise education standards? Will children have a better future if we slash funds to help them learn to read, write, and do math and science? Will children have a better future if we abolish funds to modernize all aspects of education, so that we no longer have to prepare students for the 21st century in 19th-century classrooms. Will children have a better future if the Federal Government slashes $20 billion from student aid, so that vast numbers of able young men and women can no longer afford to go to college? The answer to all these questions is no—no, no, no, no.

The American people agree. Two out of three Americans oppose a balanced budget if it means cutting Social Security, Medicare, or education. Eighty-nine percent of Americans believe a Federal Department of Education is necessary. Sixty-four percent of Americans would increase spending on public schools if they had the opportunity to write the budget.

The American people see what our Republican colleagues refuse to see in their shortsighted budget proposals. Students, families, and the country itself will suffer if we abandon our commitment to education.

Our Republican colleagues say that they want to balance the budget so as not to bury the next generation in debt. Why then are they so willing to bury this generation of students in debt?

The question answers itself. Congress and the Nation should say a resounding no to these irresponsible anti-education proposals.

Mr. CHAFEE. I wonder if the senior Senator from Massachusetts would yield for a question?

Mr. KENNEDY. I yield.

Mr. CHAFEE. Mr. President, here is the problem I find: We have a terrible deficit of $200 billion which every objective group says will rise to over $300 billion and close to $400 billion by the end of the century.

The Republicans have come up with a program that reaches a balanced budget not next year, not the year after, but 7 years away, which seems to me that would be a reasonable timetable to arrive at a situation where we are no longer sending the bills to our children.

Now, the proposal that has emerged from the Republican Budget Committee has many harsh provisions to it. When we are reducing expenditures there are going to be difficulties, as we all recognize and as the Senator has ably pointed out.

It affects this, affects that, affects things I am interested in, that the Senator is interested in, that the Presiding Officer is interested in. There is not one that will not find things we do not like.

The question is, what is the alternative? I do not believe the answer is to say stop giving those tax cuts to rich people, because in the Domenici budget there are no tax cuts. Never mind the rich people. There are no tax cuts at all.

So he has presented a budget which I know we will all find terribly challenging and difficult and dissatisfying. What is the alternative? Maybe the answer is to increase taxes. I do not believe that we can continue on the path we are, which consists of sending the bills to our children. We live high on the hog, and send the bill to our children and grandchildren. I think that is immoral.

If we do not like the proposal, what is a better one? I am not trying to put the Senator on the spot.

Mr. KENNEDY. That is fine.

Mr. CHAFEE. This is a tremendous challenge we all face.

Mr. KENNEDY. I appreciate the Senator's question.

Let me just outline my response very quickly.

First of all, I fail to understand how we are saving the future generations

from indebtedness when we are increasing so significantly—about 25 or 30 percent—the debt of students going on to higher education, which is the part I have been talking about.

Let me answer it in this way. First of all, if the Senator is prepared to reject what the majority leader has stated, and that is, that his desire to see the set-asides, the savings of $170 billion which have been included in the Republican budget in the House and the Senate of the United States, that can be used for future tax cuts, if we are going to count those in or count those out, do we say that the majority leader is for the tax cut and Senator GRAMM is for the tax cut?

I listened to the Senator from Rhode Island indicate that he is not. That, I think, is certainly a more responsible position. These cuts are coming at a time when one is fair enough to juxtapose what has been included in the House budget cuts as well as in the Senate cuts and the saving programs.

To make the judgment that we are cutting back on a number of the programs, particularly as I have mentioned here in education, and setting aside that $170 billion which can be used for tax cuts.

Second, there is no review of the fastest growing contributor to the size of the deficit, which is our tax expenditures. I indicated during the time of the line-item veto, which I supported, that I wanted to see the line-item veto go on this for tax expenditures. We are not reviewing tax expenditures. There is no similar kind of review by the Budget Committee to review the various kinds of subsidies that are out there that are going, in many instances, to some of the most successful companies and corporations. There is no review by the Budget Committee to review those and to find out which ones make sense, which ones do not make sense, and to do the same kinds of cuts that we have seen illustrated by the kinds of cuts that have taken place in this budget, identifying program after program after program after program after program that deals with education.

I think that the Senator's position in terms of fairness and judgment and in terms of the budget would be enhanced if he said, "Let's take a look at $460 billion in tax expenditures and review those and find out which ones are fair and which ones are not."

I think that is a position. Finally, let me say that I do think, and I think the Senator would agree with me, we are never going to get at the principal contributor to expanding deficits, which is the health care issue, and the escalations of health care costs both now in terms of medical care which is different from where it was from the mid-1980's to 1990, but nonetheless has doubled virtually the cost of living in terms of where we are for other goods and services.

We are never going to really deal with that increase by just cutting. We are going to have to deal with the escalation of health care costs by looking at the total health care system.

Social Security and Medicaid represent one-quarter of our health care expenditures. If we are going to have some kind of a discipline on that one-quarter, and we will have cutbacks as being included, then we will have a reduction of services without giving some kind of additional sense of reform of health care.

The Senator knows very well that treating people with long-term care and in-home care and permitting them to get help and assistance with prescription drugs which are outside of a hospital setting, and providing for better health care services, that there are many things that can be invested. It can have an impact in reducing the pressures in terms of the growth of the Medicare population.

But the idea that we are going to solve the expansion of health care costs just by cutting back again on Medicare is something that I find troublesome. I wanted to indicate to the Senator that I respect his sincere desire to move and support programs that will bring America into a closer position on the issues of our deficit, but it does seem to me that we should not simply have the harshest cuts in the areas that I think are counterproductive, because I would say to my friend and colleague, that every dollar we cut back in education we will be paying $2 more in terms of social services.

I think, and particularly with regard to education, that is wrong.

Mr. REID. Will the Senator yield?

Mr. CHAFEE. I wonder if the Senator from Nevada would let me finish.

Mr. REID. Of course.

Mr. CHAFEE. I appreciate the suggestions that the Senator from Massachusetts made. Tax expenditures—I suppose he is talking about, first of all, a whole series of things. Whether we should be providing pensions, deductible pensions, or whether we are talking about in the tax expenditures, whether he is talking about depreciation. I do not find those objectionable. But never mind.

It seems to me it would behoove everyone to come up with plans. That is, if the Senator and the administration do not like the Republican proposal for doing something about this balanced budget by the year 2002, which is a very reasonable goal to reach. We have no wars, times are relatively good, inflation is low, unemployment is low, relatively low, and this is the time to gun for this balanced budget amendment, balanced budget situation. But the administration has not done that. It has chosen not to do that.

All right, how about the Democratic Senators doing it themselves? I would be interested to see what they come up with, because this is very, very difficult. And every step that we take, we being the Republicans who have come up with this balanced budget, we are going to be attacked. And there are going to be wonderful things to attack us on. But at least we are trying to get there.

I think as a part of a sense of responsibility, if you want to call it that, that it would be wise, it would be helpful if others came up with their approach. Maybe you can do it better than we can do it. If so, three cheers, and let us hear your ideas.

Mr. KENNEDY. I thank the Senator. I appreciate his moment of challenge.

I am mindful, though, that this does come from voices that were not there when we saw the $70 billion deficit reduction program on the 1993 budget resolution. We did not have it. That is a historic fact. It is a political fact of life, as well. But there was not a single vote that came from that side, not one single vote, when we were moving toward at least a very modest increase in tax which was presented for the top 1 to 2 percent of the taxpayers, to provide a very modest increase. We did not have any support there. Nor did we have support when we were trying to provide the extension of the earned-income tax credit—that is 84,000 families in my State who were able to get some benefit, plus reduce the overall deficit by $600 million. We had that.

I have said on other occasions I respect the seriousness with which the Senator from Rhode Island approached the efforts to try to deal with the health care issue and crisis in a comprehensive way. I am not sure the Senator desires, nor do I, to get into a long debate on what happened to that particular measure.

But, nonetheless, dealing in a comprehensive way with the total health care issues that included Medicare plus other kinds of expenditures was, I think—I thought then and I still do, and I think eventually the country will recognize, whether we do it the way that was suggested the last time or in some other way—we are never going to be serious about getting a handle on health care costs, which is the principal contributor in entitlement spending, until we deal with that issue. We were not able to break through and develop bipartisan support.

I am not here tonight to get into where the blame lies for that. But I do think those of us who supported those positions, and also supported at least a line-item veto that included the tax expenditures, do not come to this debate empty-handed. We do come to this with a recognition that we have attempted to be responsible on this. I, frankly, think that is something that ought to be a part of it, as well.

Should the Senator from Rhode Island say, "OK, we did not do the health care last year. We understand we are

going to have to deal with Medicare this year, and we are prepared to try to work across the line, with this President, with the other side of the aisle, to try to get a handle on health care costs that are part of health care reform," I would welcome the opportunity to be the first who comes to the table on that issue. I think I speak for many on this side.

I must say, hope springs eternal in my soul. I think many of us understand there is nobody who could put that challenge with greater credibility than the Senator from Rhode Island. Perhaps we will wait for a little while to hear that challenge go out there where we can sit down and really try to come to grips with this issue.

Mr. REID. Before the Senator yields the floor, I have a question I would like to ask the Senator.

Mr. KENNEDY. I will be glad to yield for a question.

Mr. REID. I say to the senior Senator from Massachusetts, I recall many of us being on this floor just a few months ago, talking about the crisis in health care.

Does the Senator recall that?

Mr. KENNEDY. Yes, I do.

Mr. REID. In fact, it was not minutes or hours or days; we spent weeks on the floor talking about the health care crisis a few months ago.

I am curious; is the crisis suddenly upon us regarding Medicare? The fact of the matter is, that same crisis was here last year, when we worked weeks and weeks trying to solve the problem; is that not true?

Mr. KENNEDY. The Senator is absolutely correct. What stands out even in greater relief is the fact that in that debate there were going to be adjustments made in the Medicare system but, nonetheless, it was going to be part of an overall reform. So the seniors were going to be able, hopefully, to not only have a more comprehensive range of services available to them, but it would give them the kind of protection in the future that the continued escalation of costs for them would not provide.

As the Senator knows full well now, for the average Medicare recipient, they are paying about $1 out of $4, $1 out of $5, of every dollar for health care. Twenty years ago, it was $1 out of every $12.

Now, for those in the lower part of the Medicare system, in many instances, it is $1 out of $3.

So there is a need to both have the reform and to use resources for health care reform rather than tax cuts.

Mr. REID. I ask the Senator from Massachusetts, the fact of the matter is, if there is suddenly a recognition on the other side that there is a crisis in Medicare, should we recognize that the crisis is not in Medicare, it is in health care? Is that not a fair statement?

Mr. KENNEDY. The Senator has stated it very well.

Mr. REID. If the health care costs, as they relate to Medicare, are escalating 10.7 percent a year, is it not a fact that some private systems are going up even more than that?

Mr. KENNEDY. The Senator is correct again.

Mr. REID. That means higher insurance premiums. Does it not mean that people who have no insurance go to an emergency room; and is there any higher cost of medical care any place in the country than in an emergency room?

Mr. KENNEDY. The Senator is absolutely correct on that. The great tragedy in the cost is not only in the dollars and cents, but it is in the cost of parents who wonder if that child is $75 or $100 sick before they will even go to the emergency room to take care of those needs.

As the Senator knows, about 45 percent of all needs that are treated in the emergency room could have been treated—or are preventable—and could have been treated in a much lower-cost setting at a savings of not only resources, but also the anxiety primarily of parents and loved ones because of the illness or sickness of a member of the family.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent I be allowed to speak as in morning business for up to 15 minutes.

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

Mr. REID. Mr. President, before the Senator from Massachusetts leaves the floor, I want to say I have been here and I have used as an illustration some of the things that are being done on the other side of the aisle, as being—well, they remind me some of the things that go on in Las Vegas. We have in Las Vegas the greatest magicians, illusionists in the world. I talked earlier this week about Siegfried and Roy. They can make things happen.

Mr. KENNEDY. And David Copperfield.

Mr. REID. I did not talk about him the other day, but we have David Copperfield, who spends a lot of time in Las Vegas, who does many wonderful things. We have Melinda, who is the Woman of Magic. We also have two new magicians who now live in Las Vegas by the names of Penn and Teller. The reason the other illusionists are so mad at them is because they tell people how they do their tricks.

I think we need some help from the other side of the aisle to tell us how they are doing their tricks because the fact of the matter is, a health care crisis has been upon us for a long time. Suddenly, because they are presenting a budget to us, they find a health care crisis when there has been one here all the time. I think they have been taking lessons from some of my friends in Nevada. I think that because our colleagues on the other side of the aisle are really illusionists or magicians in the true sense of the word.

I appreciate the statement the Senator has given regarding education. We really have to concentrate on education and what it is doing to future generations.

Mr. KENNEDY. May I just ask the Senator, in the House Budget Committee, they actually cut $90 billion, I understand, from Medicare, and put it that much more at risk, in order to recapture funds in the House budget that can be used for tax reduction. Is the Senator familiar with that?

(Mr. BROWN assumed the chair).

Mr. REID. I am very familiar with that. I say to my friend that the Democrats are not against tax cuts. But I think we have to have our priorities in order. Do we take $90 billion away from senior citizens? As indicated, $1 out of every $3 they have they have to spend on health care. Is that a proper priority that we give tax cuts, $20,000 tax cuts, to people making over $350,000 a year? Is that fair, I say to my friend?

Mr. KENNEDY. I think the answer is obvious. I think that it is important as we move through this debate and the budget that is taking place in the House and the Senate that the facts come out about exactly what has been cut and who is going to pay for it. I think the Senator is providing a real service to the membership here in discussing these matters and bringing them to the attention of the membership and to the American people. I thank him for his comments.

Mr. REID. Mr. President, the budget that we have just received today does some interesting things. One thing that it does without any dispute—there is no reason to debate this—is that senior citizens on an average will spend $900 per year more for health care costs. Every year they can expect to lose about $900—in fact, if they can, and most of them cannot—they will have to pay that much more money for health care costs. As I have said to my friend from Massachusetts, there is no crisis today that there was not last December. Suddenly, there is a crisis now. Suddenly, they want to start talking about Medicare and not talk about the rest of health care costs.

Mr. President, this year health care costs in America will go up over $100 billion. We will not have any better health care as a result of that. We have to be concerned about health care generally and not Medicare particularly.

Mr. President, this rhetoric that we have heard and encompassed in this budget about Medicare reform is nothing but a smokescreen for tax cuts. There is a proposal in this Republican budget that we have for tax cuts. It is camouflaged, and says any savings we get we will apply to the tax cut. I

think any savings we get we should help these senior citizens that are having their Medicare bills increased. I think we should talk about young people who cannot go to school, or go to college. That is where the money should go, not for tax cuts for the wealthy.

We are talking about a $900 a year increase in out-of-pocket health care for every senior citizen on Medicare, and we will pay for the $20,000 annual tax cut for Americans making $350,000 a year or more. When the facts are filtered from this rhetoric, it is not the Medicare trust fund they are concerned about at all. It is tax cuts they are concerned about.

As I indicated, Mr. President, we are all for tax cuts. But there has to be a prioritization of what is important. Is it more important we give tax cuts to people who make a lot of money or that we take money away from senior citizens or kids trying to get an education?

Eighty-three percent of Medicare spending is for senior citizens with annual incomes of less than $25,000 a year. Two-thirds is for those with incomes of less than $15,000 a year. Medicare does not cover prescription drugs. It does not cover long-term care. It does not cover dental care or eye care. I think it is time for us to be concerned about improving Medicare rather than trashing Medicare.

We can come up with some savings. Should not those savings be applied to maybe taking a look at long-term care, dental care, or eye care? I would think so.

Drastic cuts in Medicare not only threaten the pocketbooks of seniors but also those of families. Some seniors may be forced to move in with their extended families once the burden of increased premiums, copayments, and deductibles become too great, if in fact they are fortunate enough to have those extended families. A move would result in loss of independence for seniors as well. That is one of the reasons that Medicare was such an important thing—that we will make sure that we did things to increase the independence of seniors, not take away their independence.

What it all boils down to, Mr. President, is priorities. How do we feel about priorities? I believe the most important thing we can be engaged in is reducing the deficit. I think it is for a lot of different reasons and we need to increase savings. We need to increase our balance of trade. We need to make sure that we do not spend more than 17 percent a year for interest on the debt. The American public has to understand that about 48 percent of what we spend is for entitlements. What is the largest part of that? Health care costs—Medicare and Medicaid. We have to do something about that, not just hack away at Medicare but do something about overall health care costs. That should not be swept under the rug.

Last year we debated health care. Perhaps we tried to do too much. There were lots of losers in that health care debate; hundreds of losers, and only one real winner in the health care debate and that was the health insurance industry. They were head and shoulders the winner. They got over the finish line way before anybody else got out of the starting block. They, through their Harry and Louise ads, set out to frighten and confuse the American public, and they hit a home run. They frightened and confused the American public beyond, I think, what even they hoped.

When the health care debate started everyone recognized the truth, that health care was in trouble. Almost 90 percent of the American public favored health care reform. When the debate ended, Mr. President, nobody favored health care reform. The health insurance lobby won the day. That does not mean that the day is won forever because the problems still exist. Health care costs are increasing, and they are driving deficits on local governments, State governments, and the Federal Government.

All of this debate about let us give everything back to the States is scaring the people in Nevada. Why? Especially the large counties, Clark and Washoe Counties get all of leftovers, people that have fallen through the safety net. Social services in Washoe County, Clark County, Reno, and Las Vegas have to take care of those people that fall through the safety net. They cannot do it. They do not have a tax base to do it. They are frightened about what is probably going to happen back here.

Mr. President, there is a statement they want to return the $170 billion dividend to the American people in the form of a tax cut. I do not think that is where the dividend should go. The budget that has been proposed slashes the prime trust funds—aid to education, student loans, all kinds of medical research, and raises taxes on working families who make under $26,000 a year. We have focused on a tax cut. That is a priority of the House and their Contract With America. That is the foundation of their contract—tax cuts amounting to almost $1 trillion over the next 10 years. But have we talked about what has happened to people who are going to get a tax increase in this budget; that is, working families who make under $26,000 a year?

The earned income tax credit is being slashed with a proposal that was introduced, or will be introduced, by the Senate Budget Committee, about 7.8 million people, will have their earned income tax credit whacked. On an average, these people have their taxes increased by $270.

Earned income tax credit recipients with incomes lower than $26,000 will lose their eligibility, generally speaking.

Now, Mr. President, what is an earned income tax credit? It is a way of keeping people off welfare, and it is a way of having people who are on welfare to get off welfare. Why? Because under current law people who make less than $26,000 a year can apply—it is on a sliding scale—to have part of the taxes they pay rebated to them. It works very well. Under current law, with earnings of $16,500 and no other source of income, a married couple with two children would have income slightly above the poverty level in 1996. While they would not owe individual income taxes, they would pay about $2,500 in Social Security taxes on their earnings. Under current law, they would receive an earned income tax credit for the amount they pay, completely offsetting their tax liability.

That is why people want to get off welfare. That is why people do not want to go on welfare. They have a chance to get ahead and be part of working America. Because larger families have greater needs than smaller families, taxpayers with two or more children are entitled to a larger earned income tax credit than taxpayers with one or no children. But under the Senate Budget Committee's mark, a very low-wage worker with two or more children will receive only a token adjustment to compensate him or her for the additional cost of raising this family.

So, Mr. President, we have to be concerned about the tax increases in this mark that we are getting from the Senate. We have heard a lot about the tax decreases for the wealthy, but what about the tax increases for people who make less than $26,000 a year?

The budget grants short-term tax cuts, especially that from the House, instead of focusing on long-term investments on education, health research, and crime control.

May I ask the Chair how much time I have remaining?

The PRESIDING OFFICER. There is 1 minute 52 seconds remaining of the Senator's time.

Mr. REID. I ask unanimous consent that I be extended an additional 5 minutes.

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

Mr. REID. I held a crime summit in Las Vegas which, coincidentally, had been scheduled for several months. It was the day after the Oklahoma City explosion. I met there with the chiefs of police of southern Nevada: Boulder City, Las Vegas, Henderson; Federal officials, DEA, FBI, judges, and a number of other people in an off-the-record discussion about problems relating to crime. There are serious problems that

we are not addressing. Law enforcement needs help, lots of help. Yet, the budget proposal cuts the violent crime trust fund.

I will be speaking to a number of graduating classes in Nevada in the next few weeks. These young people, these high school students do not face a very bright future. We are cutting back on student loans and grants, instead of being aware of the fact that money we spend for education comes back to us.

Low-income families—we have talked about them—making less than $26,000 a year are going to be paying more taxes. The budget resolution we have, Mr. President, calls for more taxes.

Research. I would recommend to every one of my colleagues that they go to the National Institutes of Health and talk to the people who have dedicated their lives to curing disease. It is wonderful, the stories you hear out there. Paralysis. We have a significant number of people who have spinal cord injuries. As a result of the perseverance of a number of physicians out there, they have been able to make significant strides in trauma associated with spinal cord injury. And as a result of the work they have done, especially work done with massive doses of steroids immediately following an accident, people today who would have been paralyzed are not as a result of the work done at the National Institutes of Health. The problems that we deal with there deal with people who are sick and injured and need help.

We are going to cut back on that research. That is wrong.

The time has come, Mr. President, to live up to promises made during the balanced budget debate. For example, to protect Social Security. The Republicans claim that under their budget they will protect Social Security. Social Security, however, will face it's greatest threat under this budget in 2002 when this budget supposedly will balance. Because Social Security surpluses are being scored against the deficit, this budget will collateralize the Social Security trust fund. Black's Law Dictionary defines collateral as "property which is pledged as security for the satisfaction of a debt." In this budget proposal, the definition of collateral is Social Security.

I think we have to live up to the responsibilities that we have. I repeat, we have to do a better job of balancing the budget. This will be the third year in a row that the budget will be lower than the year before, the first time in 50 years. Certainly, we have to do much better than we have done. We have reduced, in the last 2 years, Federal employment by 150,000 people. I think that is significant. We have had the highest economic growth in some 40 years. That is important. We certainly have not done enough. The economy needs a lot of help. The one thing we could do that would help more than any other thing would be to reduce the deficit, but we cannot do it with tax cuts. We cannot do it with cutting educational benefits.

We have to look at the big items. What are the big items? They are interest on the debt, medical expenses, and, of course, we have to look at defense. We cannot leave that because 20 percent of every dollar we spend goes for defense.

I thank the Senator from Rhode Island, the chairman of my committee, for his allowing me to go out of order in morning business.

I yield the floor.

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question before the Senate is the substitute amendment reported by the Committee on Environment and Public Works to S. 534.

Is there further debate on the bill?

The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, this is the Graham amendment?

The PRESIDING OFFICER. What is before the Senate is the committee-reported substitute at this point.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. I thank the Chair.

AMENDMENT NO. 752

(Purpose: To revise the provision relating to State-mandated disposal services)

AMENDMENT NO. 753

(Purpose: To provide that a law providing for State-mandated disposal services shall be considered to be a reasonable regulation of commerce)

Mr. GRAHAM. Mr. President, I send to the desk two amendments and ask for their immediate consideration.

The PRESIDING OFFICER. Does the Senator wish these amendments to be considered en bloc?

Mr. GRAHAM. The Senator requests that they be considered en bloc.

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

The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes en bloc amendments numbered 752 and 753.

Mr. GRAHAM. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 752

On page 63, strike line 4 and all that follows through page 64, line 2, and insert the following:

"(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

"(1) was responsible under State law for providing for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the county;

"(2) is required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

"(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through the adoption or execution of a law, ordinance, regulation, contract, or other legally binding provision; and

"(4) had incurred, or caused a public service authority to incur, significant financial expenditures to comply with State law and to repay outstanding bonds that were issued specifically for the construction of solid waste management facilities to which the political subdivision's waste is to be delivered.

(5) the authority under this subsection shall be exercised in accordance with Section 401z(b)(4).

AMENDMENT NO. 753

On page 65, line 10, strike "or (d)" and insert "(d), or (e)".

On page 65, line 3, strike "or (d)" and insert "(d), or (e)".

Mr. GRAHAM. Mr. President, these two amendments represent technical refinements to a provision of the bill which appears on pages 63 through 65, which I understand have been agreed to by both sides of the aisle, and I ask for their immediate consideration.

Mr. CHAFEE. Mr. President, indeed, they have been agreed to by this side of the aisle, and we are prepared to accept them.

The PRESIDING OFFICER. Is there further debate on the amendments Nos. 752 and 753? Is there objection to the amendments? If not, the amendments are agreed to.

So the amendments (Nos. 752 and 753) were agreed to.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. GRAHAM. Mr. President, I wish to express my appreciation to Senator CHAFEE, who, in his usual gracious manner, has been so helpful in working through these two technical amendments as well as having assisted the committee in bringing to the floor this important piece of legislation.

I would also like to commend the chair of the subcommittee with specific responsibility, Senator SMITH of New Hampshire, and the ranking minority member, Senator BAUCUS, and Senator LAUTENBERG for their courtesies in the development of these amendments and other provisions in the legislation. I would like to take this opportunity to make a few remarks on the general subject of title II of this legislation which is the provision relating to flow control.

Mr. CHAFEE. I wonder if the Senator, before he gets into that, would like to move to reconsider the vote by which the amendments were agreed to.

Mr. GRAHAM. In further thoughtfulness on the part of the Senator, I move to reconsider the votes by which the two amendments were agreed to en bloc.

Mr. CHAFEE. I move to table that motion.

The motion to lay on the table was agreed to.

Mr. GRAHAM. I thank you, Mr. President, and I thank Senator CHAFEE.

This legislation in title II, which is the title to which my remarks will be directed, raises again the fundamental question that this Federal Government has dealt with throughout its history, and that is the appropriate role of the State government and the National Government. In this case, it raises, in stark relief, the question of who should decide an issue as basic to our public welfare as the disposition of garbage.

I start from a general presumption that that level of government which is closest to the people who will be affected by the action should be able to control the action and therefore I have a general predisposition toward local and State government having responsibility and control. In this case, that predisposition also happens to be in the historical responsibility of local government for the control of their solid waste and its disposition.

Let me turn to a little background of how we got to the legislation that is before us today. I will use for purposes of my examples primarily illustrations from my State of Florida but I believe that similar examples could be drawn from any of the other some 35 States which have adopted a flow control process to direct their solid waste.

In the case of my State, this involvement was largely driven by environmental and particularly water-related concerns and the impact that those proper considerations of environmental circumstances would have on the public health. I was concerned in reading the report of the committee that the statement is made that the principal issue relative to flow control is economics. In my judgment, while economics are certainly concerns, the statement made on page 6 that "The primary factor driving the imposition of flow control ordnances is economics" confuses the ends with the means. The economics are a means of achieving the end.

In the case of my State, the end was to have appropriate sites that would protect the environment and protect public health. My State is one which is growing rapidly. We are adding some 300,000 people every year, having just crossed the 14 million size. Eighty percent of the population of the State of Florida lives in the coastal zone, basically a thin strip of land over pools of water. We depend upon that subsurface water for all of our purposes—human consumption, economic purposes, agriculture—for this large and growing population and the economy which supports that population.

A number of years ago, it was recognized that if we continued to grow at this rapid rate and continued to dispose of our solid waste in the traditional pattern that we were going to endanger our underground water supply. And, therefore, the State passed a comprehensive solid waste management law approximately a decade ago, a law that I am proud to say has been described as one of the most progressive in the Nation and has been a model for other States. That solid waste management law gave a great deal of responsibility to local government, particularly counties, to implement solid waste disposal programs. The goal was to remove a substantial amount of solid waste from landfills and into other disposal methods or into landfills that met a very high standard of environmental protection.

The authority to implement flow control already existed in Florida and thus counties used it as a tool to develop an integrated solid waste management plan that was in compliance with the State law and that addressed the threat of ground water contamination from the more traditional, less protected landfills.

It was in this context, Mr. President, that 2 years ago the U.S. Supreme Court issued an opinion, called the Carbone opinion, which essentially stated that States were without the authority to grant flow control power to their local governments, because the use of that flow control could constitute a restraint on interstate commerce.

That came as a surprise to many who felt that there were few items that were as indigenously local as the direction of garbage. The Supreme Court reached that conclusion, but went on to provide that it was now the responsibility of Congress to set whatever standards it felt appropriate in order to authorize local governments to continue exercising their flow control authority.

If I could quote from the concurring opinion of Justice O'Connor who, in joining the majority in the Carbone opinion stated that, "It is within Congress' power to authorize local imposition of flow control. Should Congress revisit this area, and enact legislation providing a clear indication that it intends States and localities to implement flow control, we will, of course, defer to that legislative judgment."

So what we have before us today is the legislative judgment carrying out that empowerment by the U.S. Supreme Court. I am concerned that the judgment that is represented in title II of this bill is a narrow judgment. It is a judgment which essentially says that as the first proposition local governments are denied the authority to engage in flow control; that is the ability to direct their solid waste.

As a second point, it provides that those communities which have already engaged in flow control prior to the date of the Supreme Court opinion, or prior to the date of May 15, 1994, which was the date upon which this initial version of legislation was first proposed, that those communities would be allowed to continue to exercise flow control for the period of time that was required for that community to meet its financial responsibility but in no cases longer than 30 years after the passage of this legislation. The implication of that is that no community which was not engaged in flow control prior to May 15, 1994, would be sanctioned to do so and those communities which were so engaged but which met their financial obligations, such as paying off the bonds that were necessary to construct a modern landfill or a solid waste recycling plant or an incinerator, that once those financial obligations were met they would lose their authority to exercise flow control and no community, regardless of circumstance, would have flow control authority for more than 30 years.

I am deeply concerned about the philosophy that says that the Federal Government is going to assume that degree of policy control over an activity which has been so historically local and which, by all of its characteristics, should continue to be local.

Mr. CHAFEE. I wonder if I could present the counterargument to the Senator's proposal. The Senator is saying that it goes against his grain and his philosophical belief that a local community cannot impose so-called flow control; a local community cannot say: We are going to build an incinerator. We are going to bond it with revenue bonds, with the revenue coming from the requirement that, for everybody in this community and every business, all trash must go to this central facility. And the reason we, the town, say that, or the city says that, is because we have to pay off the bonds to pay for the facility.

And the Senator finds it disturbing, and understandably so, that in this legislation we are saying, "No, you cannot do that anymore. Oh, yes, you can do it if you have some bonds outstanding."

Let us say the bonds have 18 years to go and that is the expected life of the facility. But beyond that, no, you cannot have this proposal. It is a little bit like, I suppose the Senator would say, Big Brother saying to the town of Lakeland, or whatever it is in Florida, whatever the town might be, "You can't do that."

Here is the other side of the argument. The other side of the argument

says the Constitution of the United States as interpreted by our courts says you cannot do this to start with; that no way can you be able to issue these requirements that everybody in this local community must go to point A to dump the trash. You cannot have some local hauler come in and take it anyplace—to take it to Rhode Island, take it to Texas, take it someplace else, no. The Supreme Court of the United States says that it is unconstitutional to have restrictions that we provide for in this legislation.

I look at it another way. Instead of saying it is difficult to comprehend why Big Brother should step in and say why you cannot have flow control or you can only have it for a limited period, instead the Congress of the United States is saying, "Despite the fact that flow control is against the Constitution of the United States because it interferes with interstate commerce, we are still going to let you have it in order to pay off your bonds."

So I look on it more as the Congress giving rather than the Congress taking it away.

Mr. GRAHAM. Mr. President, I think, respectfully, that is not a proper reading of what the Supreme Court said in the Carbone case. I will just refer you to page 8 of the committee report which quotes the language of Justice O'Connor in which she states quite unequivocally:

> It is within Congress' power to authorize local imposition of flow control.

Mr. CHAFEE. That is right.

Mr. GRAHAM. Mr. President, I continue the quote:

> Should Congress revisit this area and enact legislation, providing a clear indication that it intends States and localities to implement flow control, we will, of course, defer to that legislative judgment.

So we have a range of judgments that we can make, including that it is appropriate for State and local governments to continue to implement flow control, those communities which had done it in the past and those which might like to do it in the future and those which have done it in the past which have paid off indebtedness and wish to continue to utilize it. It is within our power to place the decisionmaking as to whether to use flow control or not in the hands of literally tens of thousands of local government officials, as opposed to centralizing that decision in Washington, with the judgment that is contained in title II of this legislation, which essentially is: Thou shalt not engage in flow control unless you were doing it before May 1994 and, even then, only for the period necessary to pay off your indebtedness and, in no case, more than 30 years from now.

Mr. CHAFEE. I dispute the Senator's characterization of the Congress or the Senate saying thou shalt not engage in flow control. It is not us that is saying that. The Supreme Court has said, "You can't do it. And, indeed, if you try and do it, you are violating the Constitution."

But the Supreme Court goes on to say, "But if you, the Congress, want to give them that power, then you have the ability to do so."

I do not think it is us imposing a "thou shalt not" on them. In effect, we are coming to their rescue. It is true, we could be a broader rescue mission than we are currently on. The Senator aptly has pointed out, all we are doing is limiting our rescue mission; all we are saying is we will rescue those towns that have already made the commitment. They had imposed flow control saying everything had to go to this central landfill or central incinerator, and we are saying you can keep it up because you issued bonds thinking the law was the way it was, you did it fairly, and along comes the Supreme Court which says it is against the Constitution. OK, we will come and help you out.

That is what we are doing. We are not doing it, as the Senator is aptly saying, in perpetuity. We are not saying whatever you want to do in the towns is OK. We are limiting it.

But it is not us who said no to them to start with.

Mr. GRAHAM. Mr. President, I say to my friend and colleague, the Supreme Court has clearly stated, as it does in many of these instances, that activities which are violative of the interstate commerce clause can be made constitutionally acceptable if Congress sets the standards and clearly grants the conditions for that authority.

Mr. CHAFEE. Absolutely.

Mr. GRAHAM. Justice O'Connor has stated it quite explicitly that we have that authority, and I am suggesting that prudence would lead us to a position that would say, let us exercise the authority that the Supreme Court has held that we can possess under the Constitution in a way that decentralizes decisionmaking, that lets local communities, with locally elected officials, take into account their local conditions.

For instance, we are about to say to one of the fastest growing communities in my State, Volusia County, which contains cities such as Daytona Beach and Ormond Beach and DeLand—a very rapidly growing area—that they cannot engage in flow control as a means of managing their solid waste in such a way as to give maximum protection to their vulnerable underground water supply.

I do not know why we in Washington feel that we know more about the sensibilities, the economics, the values, the environment, the public health threat of the people in Volusia County than their locally elected officials. What purpose are we serving by being so narrow in our willingness to offer—my State just a few years ago was one of the smallest States in the Union. In fact, we are celebrating our 150th anniversary of statehood. When we came into the Nation in the year 1845, we had only slightly more than 40,000 people. One hundred fifty years later, we have 14 million people. Twenty years from now we will have 19 million people. They are occupying the same piece of property with the same environmental circumstances.

Many communities, about 15 to 20 in my State, have said, "We need to do a better job of protecting our water supply and inappropriate landfills." Here is what we are going to do for the citizens of my community with the support of the citizens of my community through their elected representatives to do so. We are now about to say that everybody who did not get on to that train, authorized flow control prior to May 1994, are going to be forever shut off.

I do not understand what public purpose we are advancing by denying them the right to do so.

Mr. CHAFEE. I do not want to quibble over language, but it is not us saying you are forever shut off. If we did nothing, you could be shut off, if we did not pass a piece of legislation here. What Florida is doing now, plus those who want to do it, they would be shut off. I guess I am just trying to see where is the nonaction—if we did no action, nothing would happen, you would not have flow control.

Mr. GRAHAM. I am going to describe in a moment the dilemma that a person like myself is in, because there clearly is an urgency to act for those 15 to 20 communities which had formed an alliance using flow control and committed themselves to these major environmentally and public health protecting measures. But it wounds and offends me that in the same action where we are protecting the past, we are unnecessarily closing off the future for those communities which today, and certainly in a few years, will be exactly like those that have taken advantage of flow control in order to develop these more environmentally and public health protecting measures.

Mr. CHAFEE. Well, the Senator has a good point. The other side of the coin is that once you permit this, you are permitting communities to set up and operate. That may be all well and good. But BFI, or Waste Haulers, or whoever it is, cannot come in there and offer better, cheaper service, and some citizen in that community is being deprived of choice.

Mr. GRAHAM. You are taking the position that we here in Washington have to be the "big brother" to protect 260 million Americans. I do not think that the county commissioners of Broward County, FL, or the city council of Providence, RI, are insensitive to the desires of their citizens. They are the

99-059 O—97 Vol. 141 (Pt. 9) 16

ones who wake up every morning in that community. They are the ones who daily deal with these issues which are, in many cases, difficult balancing questions. Yes, you could have cheaper garbage rates in Broward County if everybody just hauled it to the local hole in the ground and dumped it. But you would also be putting your water supply at risk. And so the commissioners of that community made a judgment that they were prepared to ask their citizens to pay higher garbage fees in order to be able to dispose of their solid waste in a more environmentally appropriate manner. Why should they not be making that decision as opposed to our telling them it is a decision that will be unavailable to them?

Mr. CHAFEE. I think this. First, I am not willing to concede that in Broward or Dade County, or wherever it might be, inevitably, if do you not have flow control, your waste is going to end up in an environmentally damaging situation. That does not necessarily follow. We have all kinds of laws on the books dealing with the handling of waste in this country. And if some other outfit comes in—Waste Management, or whoever it is—and hauls it, they cannot just take it and dump it in some lovely field above a ground water area. They have to dispose of it in a proper way.

But the whole root of what we are dealing with is the commerce clause of the Constitution of the United States, which says that there should be free interstate transportation and movement in our Nation. That has served us pretty well. You might say, "How petty can you get? Why should Miami, or wherever, not be permitted to handle their waste, and if everybody has to take it to one place, and that is the only place, that is the way we want to run our business?" But the Supreme Court has said that is against the Constitution. I know we can fix it up, and the Supreme Court, as you pointed out, has also said we can straighten it out. So far, we have chosen not to take that extra step.

Mr. GRAHAM. So we are here, Mr. President, making an important political judgment. We have the range of authority to deny totally flow control authority to anybody, including those communities which have already utilized it and, in reliance upon it, committed themselves to significant financial obligations. That is an alternative that is available to us.

At the other end of the spectrum, we have the authority to grant a very broad license to local governments and States to utilize flow control.

What we have chosen to do—and I underscore the word "chosen"—we have selected among options what I will call a targeted grandfather approach, in which we have said that for those who were in business as of May 1994, and a rather tight definition of what you had to be doing in May 1994, all of which is outlined on pages 56 through 58 of the legislation, for a specific duration of time, you shall have authority to use flow control. Everybody else you excluded.

Let me, if I could, complete some examples that would give some context as to this theory of who should decide as to the range of local authority. I mentioned earlier a case of Volusia County, Deland, and the largest city, which is Daytona Beach, a fast-growing area in east central Florida. The county currently does not have flow control. The county was wise a number of years ago when it was able to purchase a large piece of land at a low price and has been, in part because of that, extremely successful in keeping its tipping fees—that is the charges to use the landfill—at a low rate, the lowest in the State, and still provide for an integrated solid waste management system.

At this point, they are not facing any particular competition and, therefore, the county has not had a need for flow control. But the director of solid waste in Volusia County is concerned about the future. The director recognizes that he may not be able to effectively address the public safety issues in our State—the threat of ground water contamination—without the ability to control the waste stream, should a private facility decide to open a facility in the area that undercuts the counties' tipping fees.

In addition, the director of solid waste is concerned about the ability of the county to float bonds in the future when it needs to expand its current facilities. Flow control authority would enable the county to have a stronger bond rating. Therefore, the absence of prospective flow control is a serious concern to this rapidly expanding county in Florida.

The dilemma that I mentioned to Senator CHAFEE that many of us feel is that we recognize the sense of urgency to pass legislation that reempowers those communities which had been using flow control and which had relied upon it. We all agree that we must act quickly to address the financial crisis that those communities are facing now.

Again, I use an example in Florida of Dade County. Dade County a number of years ago, utilizing the State authority for flow control in order to carry out its responsibilities for an integrated solid waste system, set up a series of modern landfills and incinerators. Since the Supreme Court action, which has undercut its ability to use flow control to assure that there was a sufficient amount of solid waste going to these facilities in order to generate enough revenue to pay for the cost of operation, maintenance, and debt service on those facilities, the county has been losing 45 percent of its waste, which equates to $53 to $68 million a year in revenue. Moody's Investors Service has recently downgraded Dade County's solid waste revenue bond from an "A" to "Baa1." Moody's specifically stated that the significant diversion of waste to out-of-county facilities undermined the current rate structure and that the lack of a long-term strategy jeopardizes the system's continued ability to meet financial obligations.

The county is also faced with an inability to plan for future capacity and to ensure that recycling goals will be met in the future, that is, future planning has been eliminated due to the severity of the current fiscal crisis.

Half of the bulk waste recycling centers in Dade County have now been closed. These centers used to accept old furniture, appliances, tires, and other materials that could be recycled rather than placed in a landfill.

Dade County had extensive school education programs encouraging young people to become involved in appropriate activities for the disposal of solid waste, especially directed at recycling. Those school programs had to be eliminated because of the financial crisis.

Dade County had an active mulching program which has been dramatically scaled back now to a bare minimum. This program in the past provided mulching services to residents who brought yard waste and tree branches, and the mulch was distributed to homeowners and farmers. Now it goes directly to a landfill so that the county can come closer to meeting its waste level requirements.

Elimination of innovative recycling programs has also been a consequence of this financial crisis. Phone books, high-grade trash, tires, and destruction and demolition debris which used to be recycled are now headed for the landfill.

The clean organic waste composting programs are in jeopardy, due to insufficient waste to implement the plan beyond a demonstration phase.

Those are some of the urgent consequences of the Supreme Court's action for a community which had adopted flow control, and based upon flow control, an integrated solid waste management program. They had incurred very substantial, in the case of Dade County, over $100 million of indebtedness in order to pay for all those facilities.

It is because of communities such as that across America that there is an urgency to pass legislation that will provide for reempowering of those communities to utilize flow control and regain control of an important segment of a traditional local government responsibility.

Mr. President, I am concerned that there is a bleak outlook for communities in the future. There are many

other communities which are going to want to do what counties like Dade have already done. That is, utilize flow control.

The ability of the local government to direct where its trash will be stored, as unromantic a function as government could engage in, but an important function which touches the lives of every citizen in the community; to allow the people who are elected in that community to make the judgment as to what is most appropriate to meet the variety of needs in that community.

As I mentioned earlier, when my State came in the Union 150 years ago, it was the smallest, the poorest, and the most remote State in the Union, with a population of slightly more than 40,000. Today it has a population of over 14 million. Twenty years from now, at current growth rates, it will have a population nearing 20 million from its current 14 million.

Are we to assume there will not be a similar set of concerns about protecting our ground water supplies, protecting public health 20 years from now, as there was when these communities that today are engaging in flow control adopted their plans? Clearly, the answer to that is no, there will be a similar need for this type of local control of where trash is disposed of in order to meet local environmental and public health circumstances.

I believe strongly that these decisions should be made at the local level by those elected officials who are closest to the situation. This is not a conflict between government control and free market. In fact, in my State, most of the actual work of solid waste management is done by private firms.

As an example in Hillsborough County, the county seat of which is Tampa, waste energy facility is operated by Ogden-Martin; landfill by Waste Management; BFI operates a majority of the residential recycling program. A wonderful example of a public-private partnership. In Lake County in the center of the State, the waste energy facility is also operated by Ogden-Martin, and the county has franchise agreements to haul solid waste with three different private companies.

This is not an issue of the free market versus government control. It is an example of local communities, through locally-elected representatives, taking control of the responsibility for their destiny, particularly protecting one of the most critical resources of that community, its ground water.

Mr. President, I believe that it is urgent that we pass legislation on this subject. I would hope that before we complete our deliberations that we would think seriously about the restraints that we are imposing—I think, unnecessarily—that we would think about the degree to which we are Federalizing what has been a traditional local responsibility, the decision of where to dispose of garbage.

We are going to continue to be engaged as we have over the past several weeks in some fundamental questions of what level of government should decide important public issues and whether those decisions should be made one time here in Washington or should be made 50, or 500, or 5,000 times at State and local levels.

Earlier today, we passed legislation that changed over two centuries of American law relative to product liability. For two centuries that responsibility was placed at the State level. States had the responsibility to understand their own history, culture, politics, economics, and they make a judgment as to how these matters of civil justice should be resolved.

Colorado is a different State than Florida. South Carolina is a different State than South Dakota. I believe in the proposition that the citizens of those individual States should make judgments as to what is appropriate for them today and in the future.

I strongly feel that that is also true of the issue of how to protect natural resources, and how the disposition of solid waste affects the protection of those resources. The situation is different from a relatively arid State in the West than it is in a subtropical environment in my State of Florida. The situation is different in the State with the peaks of Colorado, from the State that is relatively close to its water supply as we are with our high underground surface water in Florida.

I believe that prudent policy for the future should be as it has been in the past. That it is a responsibility of locally-elected officials who are accountable to the people that elect them, to make a judgment as to what is in the best interest. They would have the same range of choices that we would have, but they would be making it based on their understanding of the specific circumstances in their community.

I think that is intelligent federalism which we should apply to this issue of solid waste disposal in the future, as we have in the past. That it is not appropriate for Congress to make a decision here today that two centuries of American tradition will be overturned, and now we are going to federalize into a single decision here in Washington for all of our States and all of our local communities one answer to the question, of how they can dispose of their garbage.

Mr. President, I think the American people feel we have a lot of important things to be dealing with here in Washington. Clearly, one of those is going to be how to bring the Federal budget into balance.

I would suggest that that is a demanding enough responsibility for Senators to make. We do not have much time left over to decide how Quincy or Greeley will dispose of their garbage. We ought to let the people in Greeley, CO, and Quincy, FL, decide how to dispose of their garbage and put our attention to what the public expects Congress to do—how are we going to balance our budget.

If we allocate responsibilities in that way, I think both the citizens of Greeley, the citizens of Quincy, and the citizens of America, would feel as if we were doing the jobs that they expected the Senate to do, and how we were graded on how well we balanced the budget, would hold Senators to account and how well the county and city commissioners of Greeley and Quincy did their job would be the basis upon which they would be held accountable by their vote.

Mr. President, in conclusion, I appreciate the fact that my friend and colleague, the junior Senator from Rhode Island and the chairman of the Environment and Public Works Committee, accepted the amendments which I offered earlier. I hope that during this process we will give serious attention to the question of, do we really want to federalize the issue of disposal of local garbage? Or would we not be more prudent to accept the invitation of the Supreme Court to allow this to continue to be a responsibility of properly elected State and local officials?

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call.

Mr. DASCHLE. 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. DASCHLE. Mr. President, I ask unanimous consent that I be permitted to speak as this morning business.

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

THE PRESIDENT'S TRIP TO RUSSIA

Mr. DASCHLE. Mr. President, earlier today Senator MCCONNELL suggested on the Senate floor that the President's trip to Moscow has been a wasted effort—that there has not been a shred of progress made there. I do not want anyone who may have been listening to that statement to be misled by it, for, in my view, it simply is not accurate. It is important to review the reasons President Clinton went to Moscow and to assess his trip to Moscow—which is not yet over—with those goals in mind.

The President went to Moscow to honor the sacrifices of the Russian people to defeat the Nazis and fascism in World War II. Russians lost approximately 20 million people in that war—more than any other Nation. With the

end of the cold war, this is the United States first opportunity to convey our appreciation. Our policy's to seek better relations not only with the Russian Government, but with the Russian people as well to help democracy take root there.

The President also went to Moscow to pursue discussion on key issues. The United States expectations were low, and our progress has exceeded those expectations. Among the accomplishments so far—and I emphasize that the trip continues tomorrow—are:

First, with respect to European Security, the Russians agreed to implement two Partnership for Peace agreements that are important to realize our goal of a comprehensive system of security in Europe.

Second, on the issue of theater missile defenses. The Russians agreed to a Statement of Principles that preserves the ABM Treaty and enables us to proceed with deployment of theater missile defense systems.

Third, the Russians agreed not to provide a gas centrifuge enrichment facility to Iran and to continue to review and discuss the proposed sale of lightwater reactors. That review will be through a special group created at the March ministerial meeting of Secretary Christopher and Foreign Minister Kozyrev.

Fourth, President Clinton secured an agreement with respect to nuclear materials to enable both countries to cooperate to ensure the safe storage of nuclear weapons and nuclear weapons materials.

Finally, agreement was reached on a statement to guide economic relations between the two countries that is important to our efforts to keep the Russian economic reforms on track.

So, in my view, a substantial degree of progress has been made with regard to Iran, with regard to the ABM Treaty, with regard to a number of issues relating to European security. And, as I indicated, the trip continues.

That list of substantive accomplishments is impressive; to expect more from one trip is, frankly, unrealistic.

Overall, the progress is indicative of the continuing interest of both countries to cooperate where we can and manage our differences constructively.

We should not judge this relationship or this meeting against an arbitrary scorecard, and we must not forget that this is not the old Soviet Union. This is a process to develop our relationship with the new Russia—again, not just its government, but also its people; to build on the potential that resides within that relationship that must be rooted in democracy and a mature and balanced dialog.

It is an important relationship, and the President is wise to invest in it. I applaud his efforts, and the fact that he has accomplished as much as he has in the last 2 days.

Perhaps President Clinton said it best today:

> If you asked me to summarize in a word or two what happened today, I would say that we advanced the security interests of the people of the United States and the people of Russia.

I should also note that, regarding Chechnya, the President spoke out strongly and publicly against Russian action in Chechnya at an event at Moscow State University. He has made clear to President Yeltsin and to the Russian people the United States position. Tomorrow he will meet with opposition leaders and with the family of Fred Cuny, the American aid worker still missing in Chechnya.

So I would say the President certainly went to Russia knowing we have serious differences with Russia, but committed to the essential process of supporting democratic roots and institutions in Russia and developing our relationship with the Russian people. The list of accomplishments is impressive, and the trip continues.

I only hope that in the interest of ensuring the greatest degree of success, at least until he returns, we give him the greatest benefit of the doubt, that we offer him our support, that we send the right message to the Russian people that we stand behind this President as he negotiates, as he continues to confront the many very perplexing issues that we must address in our complicated relationship with the people of Russia and certainly Russian leadership.

So, again, I must say I think in 2 days it is remarkable the President has developed the list of accomplishments he has. I hope we could continue to add to that list in the remaining time the President spends in Russia. It was a trip well spent. It was a trip I think we can look on with some satisfaction. I hope as the President continues to travel we can demonstrate our support for him and for his efforts, and wish him well as he continues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. I thank the Chair.

(The remarks of Mr. CHAFEE pertaining to the introduction of S. 789 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The pending question before the body is the substitute amendment reported by the Committee on Environment and Public Works to S. 534. Is there further amendment?

Mr. CHAFEE. Mr. 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 legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 754

(Purpose: To express the sense of the Senate on taking all possible steps to combat domestic terrorism in the United States)

Mr. SPECTER. Mr. President, I send an amendment to the desk on behalf of myself, Senator CRAIG, Senator GRASSLEY, and Senator BROWN, and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] for himself, Mr. CRAIG, Mr. GRASSLEY, and Mr. BROWN, proposes an amendment numbered 754.

The amendment is as follows:

At the appropriate place, insert the following new section:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) There has been enormous public concern, worry and fear in the U.S. over international terrorism for many years;

(2) There has been enormous public concern, worry and fear in the U.S. over the threat of domestic terrorism after the bombing of the New York World Trade Center on February 26, 1993;

(3) There is even more public concern, worry and fear since the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995;

(4) Public concern, worry and fear has been aggravated by the fact that it appears that the terrorist bombing at the Federal building in Oklahoma City was perpetrated by Americans;

(5) The United States Senate should take all action within its power to understand and respond in all possible ways to threats of domestic as well as international terrorism;

(6) Serious questions of public concern have been raised about the actions of federal law enforcement officials including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms relating to the arrest of Mr. Randy Weaver and others in Ruby Ridge, Idaho, in August, 1992 and Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Taxas, between February 28, 1993, and April 19, 1993;

(7) Inquiries by the Executive Branch have left serious unanswered questions on these incidents;

(8) The United States Senate has not conducted any hearings on these incidents;

(9) There is public concern about allowing federal agencies to investigate allegations of impropriety within their own ranks without congressional oversight to assure accountability at the highest levels of government;

(10) Notwithstanding an official censure of FBI Agent Larry Potts on January 6, 1994, relating to his participation in the Idaho incident, the Attorney General of the United States on May 2, 1995, appointed Agent Potts to be Deputy Director of the FBI;

(11) It is universally acknowledged that there can be no possible justification for the

Oklahoma City bombing regardless of what happened at Ruby Ridge, Idaho, or Waco, Texas;

(12) Ranking federal officials have supported hearings by the U.S. Senate to dispel public rumors that the Oklahoma City bombing was planned and carried out by federal law enforcement officials:

(13) It has been represented, or at least widely rumored, that the motivation for the Oklahoma City bombing may have been related to the Waco incident, the dates falling exactly two years apart; and

(14) A U.S. Senate hearing, or at least setting the date for such a hearing, on Waco and Ruby Ridge would help to restore public confidence that there will be full disclosure of what happened, appropriate congressional oversight and accountability at the highest levels of the federal government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held before the Senate Judiciary Committee on countering domestic terrorism in all possible ways with a hearing on or before June 30, 1995, on actions taken by federal law enforcement agencies in Ruby Ridge, Idaho, and Waco, Texas.

Mr. SPECTER. Mr. President, the thrust of this amendment is clear on its face; that is to proceed as promptly as possible, but in a reasonable way, to have as comprehensive hearings as possible in the U.S. Senate on ways to combat terrorism.

Pursuant to that general objective, this Senator scheduled hearings in the Subcommittee on Terrorism, a series of four hearings, with a fifth one planned. The first hearing was scheduled for April 27 on legislation which had been pending dealing with terrorism, with its focus on transnational terrorism but also with some focus on domestic terrorism as it related to FBI counterterrorism strategies. A second hearing was scheduled for May 4, with the subject being technical aspects of the legislation and also to provide an opportunity to the American Civil Liberties Union, the American Jewish Congress, the Irish National Caucus, and the National Association of Arab-Americans to be heard on the civil liberties issues raised by the legislation. The third hearing is scheduled for May 11, which is tomorrow, on the subject of the so-called mayhem manuals on how to make bombs being transmitted over the Internet. A fourth hearing is scheduled for May 18, dealing with Ruby Ridge, ID, and Waco, TX. There is a fifth hearing planned, which we may be able to schedule for May 25, which would deal with the growth of the militia movement around the United States.

The hearing scheduled for April 27 became a full committee hearing and proceeded on that basis. Then Senator HATCH, who is on the floor at the moment—I had notified him that I would be presenting this sense-of-the-Senate resolution at about 6:20, as we are doing at this time—wrote to me saying that he believed the May 18 hearing should not be held as scheduled but ought to be held at some time in the future with a date not specified.

It is my view, Mr. President, that it is a matter of urgent public interest that the hearing be held as promptly as reasonably possible, but in any event that a date certain should be set so that we do not have the vague and indefinite statement as to when a hearing might be held in the future.

This is a matter which I have been concerned about since the incident in Waco, going back to April 1993. I had requested, shortly after the incident in Waco, that the Judiciary Committee hold hearings on the subject. The response which was given at that time was that hearings ought to be deferred until internal agency investigations were concluded. Once that had happened, other matters overtook the Judiciary Committee, and the hearings have never been held. I pursued the matter last year, however, by inquiring of the Justice and Treasury Departments about some of the conclusions they reached in their internal reports.

There is a great deal of public unrest as to what happened at Waco. There has been a report filed pursuant to an investigation initiated by the Department of the Treasury which was highly critical of the actions of law enforcement officials there. An internal investigation by the Department of Justice found little fault, to characterize it, although the report speaks for itself.

The incident at Ruby Ridge drew a tremendous amount of controversy. A deputy Federal marshal was killed; others were killed. There was a Federal prosecution, and the defendant, Mr. Randy Weaver, was acquitted of the most serious charges in that matter.

As specified in the sense-of-the-Senate resolution, there is substantial public concern that the handling of the Waco incident may well have been a triggering factor in the Oklahoma City bombing, with the Oklahoma City bombing coming on April 19, 1995, exactly 2 years after the date of the Waco incident.

Mr. President, it is hard to emphasize it any more strongly than was said in the sense-of-the-Senate resolution, that regardless of what happened at Waco and regardless of what happened at Ruby Ridge, there was absolutely no possible, no conceivable justification for the bombing in Oklahoma City. But there are those who say that the triggering factor at the Oklahoma City bombing was the failure to have appropriate action taken as to what happened at Waco. The media are full of reports of militias being concerned about what is happening in the Federal Government and fears expressed by many people that the Federal Government will infringe on or abolish the constitutional rights of citizens, including their rights under the second amendment.

I believe that it is incumbent upon the Senate to have hearings on this matter so that there may be assurances of full disclosure—let the chips fall where they may—so that there may be public assurance that the Congress of the United States will exercise its oversight responsibilities and that, if we do not act at least to set a hearing date, that this issue will fester and who knows what the consequences may be.

I certainly do not want to make any predictions or have any self-fulfilling prophecies. But I believe as a U.S. Senator, as chairman of the Terrorism Subcommittee, as a member of the full Judiciary Committee, and also as the chairman of the Senate Intelligence Committee—which could conceivably have jurisdiction over these matters, but I think it is more properly a matter for the Judiciary Committee—that action be taken so that the Congress of the United States, the Senate of the United States, in pursuance of its oversight responsibilities, will do everything that it can to investigate and understand the problem of terrorism and to take all action which it can to respond. If we sit by idly without taking as much action as we can to allay the public concerns which have been expressed, that there has not been appropriate action by the Federal Government to hold accountable the Federal officials who were involved in Waco, TX and Ruby Ridge, ID, that certainly we would be responsible if anything happens in the interim which might be attributable, fairly or unfairly, to our inaction.

There had been reports that the Senate was not acting on Ruby Ridge, ID, because of concerns that there might be some interference with the investigation which is being undertaken by the prosecuting attorney of Boundary County, ID. The prosecuting attorney there, Randall Day, is conducting an inquiry to make a determination as to whether there ought to be a State prosecution of Federal officials.

Having had some experience in that particular line and not wanting to interfere with whatever the prosecuting attorney of Boundary County, ID, might want to do, I called Mr. Day and had an extensive conversation with him. There is no objection on Mr. Day's part for Congress to undertake whatever kind of an inquiry we choose to undertake.

Mr. Day advised me that there is a report by the Department of Justice which he has seen, which is not public, and he has a concern that if that report comes into the hands of potential witnesses that there may be some problem with those witnesses. But that would be unrelated to whatever kind of a hearing the U.S. Senate might want to undertake.

Mr. President, the essence of this resolution is that we move ahead with a hearing on Waco and Idaho, as they are, at least in the minds of many, related to the problems of terrorism in

the United States. I personally believe it is totally insufficient to deal with this matter by talking about hearings, as Senator HATCH has said, "in the near future" or "after the House completes its hearings." That is a framework which is not sufficiently definable or definite, I think, to address this problem as it should be addressed.

My preference is to proceed with a hearing on May 18. I would be delighted to see that hearing in the full committee, as the hearing was held on April 27, after the original notification and purpose was sent out for a Terrorism Subcommittee hearing. So let there be no mistake, a full committee hearing would accomplish all of the purposes which I have in mind.

But I feel very strongly that we should not stand idly by without having the hearing or at least setting a date for the hearing. That is why the resolution is specifically calling for a hearing on or before June 30, which will at least let everyone out there know that there will be oversight and that the Senate will take action to put all the facts on the table and let the chips fall where they may, so that we will be doing everything in our power to understand terrorism and to curtail it to the maximum extent that we can.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. GRAMS). The Senator from Utah.

AMENDMENT NO. 755 TO AMENDMENT NO. 754

(Purpose: To express the sense of the Senate concerning the scheduling of hearings on Waco and Ruby Ridge in the near future)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 755 to amendment No. 754.

The amendment is as follows:

Strike all after the first word and insert the following:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, to investigate and effectuate (or seek to effectuate) the arrest of Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Texas;

(2) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco and Firearms, to investigate, and effectuate (or seek to effectuate) the arrest of Mr. Randy Weaver and others associated with Mr. Weaver, in Ruby Ridge, Idaho;

(3) The Senate has not yet conducted comprehensive hearings on either of these incidents;

(4) The public interest requires full disclosure of these incidents through hearings to promote public confidence in government; and

(5) The public's confidence in government would be further promoted if the timing of the hearings takes into consideration the need for such hearings to be conducted in an atmosphere of reflection and calm deliberation.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held in the near future, before the Senate Judiciary Committee, at a time and under such circumstances as determined by the Chairman, regarding the actions taken by federal law enforcement agencies and their representatives in the aforementioned Ruby Ridge and Waco incidents.

Mr. HATCH. Mr. President, as usual, I have a lot of respect for the distinguished Senator from Pennsylvania. I know that his intentions are honorable. He would like to have these matters examined, and I believe that they will be examined.

I have to say that there were 12 Federal law enforcement officers and personnel who were murdered in the Oklahoma City tragedy.

I understand that memorial services for those Federal law enforcement personnel will be held next week. Out of respect for those who were victims, I am reluctant to hold hearings on Waco at this time—although I believe Congress must do so. I have to admit that nobody has been more concerned about the Waco incident and the Ruby Ridge incident than I have been. After all, both States are in close proximity to mine. I have a lot of friends in both States, and there has been a considerable amount of pressure on me to hold hearings in the last month or so, and even before that.

I been frank about the fact that I intend to hold Judiciary Committee hearings. When I heard that the House was going to start hearings on Waco and Ruby Ridge, with the agenda that we have in the Senate, which is a very heavy Judiciary Committee agenda, and also with the occurrence at Oklahoma City, I told people that we will hold hearings but that I would like to wait at least a reasonable time and allow the FBI and other law enforcement agencies to do everything they possibly can to catch, convict, and punish those people who were responsible for the Oklahoma City bombing. It is certainly the most tragic terrorist incident in the history of this country. There are others that I can cite, some of which even involve my own forebears. As people will recall, the Mormon Church is the only church in the history of this country where its members had an extermination order against them, issued by a Governor of one of these States, which extermination order was rescinded by none other than one of our colleagues when he was Governor of that respective State.

I have to say that we will hold hearings and I intend to hold them in a reasonable period of time. They will be held, though at the full committee which is the proper jurisdictional setting, as the full Judiciary Committee has retained jurisdiction over the Department of Justice. This issue is a Department of Justice oversight issue, so the full committee should hold these hearings.

One thing I am very concerned about is pulling any FBI leader off of the Oklahoma City case until they wrap up the investigation. They are making great headway. I am updated almost daily by the Director of the FBI, by people at the Justice Department, people in this administration, and others who are on top of what is happening following the Oklahoma City bombing. And I personally believe we should allow our law enforcement community some time—and it may be longer than the middle of next month or the end of June—for them to use every power at their disposal to resolve the investigation and problems in Oklahoma City.

Now, every time we have one of these hearings—and in this particular case, if we hold a hearing, a Department of Justice oversight hearing on Waco and Ruby Ridge, the FBI Director is going to have to be there. Mr. Potts, who is doing an excellent job of running the investigation on Oklahoma City, is getting accolades from everybody involved in this particular investigation. Were we to hold hearings now, Mr. Potts would have to defer his time from Oklahoma City to prepare for and testify at our hearings up here. And there are innumerable other people who may or may not be involved in hearings, but who need to be on the job in Oklahoma City.

That is why I am reticent to calling these hearings during the month of May, and I am reticent to have a due date of June 30, which is what the distinguished Senator has in his sense-of-the-Senate resolution. I will be happy to do whatever the Senate says. But it is my prerogative as chairman of the Judiciary Committee to determine when these hearings are going to be held. I have to say that I hope that the Senate will take into consideration the importance of the work that is being done to try and uncover the problems and catch those responsible for the Oklahoma City bombing.

I personally think it is the wrong thing to do—to try to push hearings too soon on this matter, under these circumstances at this time.

Now, perhaps there is reason to criticize the Senator from Utah for not having held hearings before the Oklahoma City incident, but the Senator from Utah has been studying these matters and we have people looking into them. We do not feel that we are prepared to hold the hearings at this particular time, and we certainly were not prepared before the Oklahoma City incident. Indeed, much of our attention in

the Judiciary Committee has been focused on passing the Contract With America.

I want to share with my colleague from Pennsylvania that I have many friends who are very concerned in my home State and in the State of Idaho, my neighboring State, and in the State of Texas, a State I have a great deal of love and respect for, who are very concerned about the fact that the Waco and Ruby Ridge matters have been allowed to drag on as long as they have. When I heard that the House was going to move forward, I thought to myself, good, let them do it and then we will watch that carefully and we will follow up with hearings, if necessary, to do the necessary things to cover all of the matters that were not covered there or that need to be recovered by Members of the Senate.

There is no desire on my part to avoid holding hearings, no desire to ignore these matters. And there is no desire to fight the distinguished Senator from Pennsylvania on this issue. I will be happy to hold hearings, as I informed the Senator. There will be full committee hearings. The distinguished Senator from Pennsylvania will have every right to participate as a distinguished member of the committee. He is a member whom I respect. But it ought to be done, it seems to me, in a reasonable and a considered way, giving consideration to the pressures on everybody, including members of the Judiciary Committee but, most importantly, on the leadership of the FBI at this particular time. Perhaps they will wrap up the Oklahoma City investigation within the next week or so. I imagine it is going to take more time than that. But they are on their way, and they are making great headway and I do not want to pull anybody off from that investigation at this particular time.

If we did, you never know whether some felon or murderer could slip through and escape or find some way out, or cover his or her tracks or their tracks; we just do not know at this point.

So I encourage my colleague from Pennsylvania to work with me on a resolution that will certainly express the sense of the Senate to hold hearings on this matter but to do so in a timeframe that I think will bring people together rather than split us apart. I would like to do that, and I am humble enough to be given advice and to try and follow it. But in this particular case, I feel very deeply that there is a time to hold these hearings and a time not to. And right now is not the time to do it. I believe probably next month will not be the time to do that as well. I certainly hope that we will hold hearings in a short time and in a reasonable time from this particular date.

So I commend the Senator from Pennsylvania for his desire to do this, for his zeal, and for his interest in trying to resolve wrongs that exist or may exist in this country with regard to these two incidents and any other incident. I also believe that if we are patient and wait until we see the outcome of the investigation of the Oklahoma City bombing—if we wait a short while longer, not only will we help the FBI and others to get the job done, but we may be able to uncover some things that will help us to understand improvements that they are making at the FBI with regard to terrorism. And I have no doubt that we will uncover the truth about whether there is no conspiracy of the Government against the American people, or against the militia movement, or against individual citizens. We know that there have been mistakes made. In Waco, it was a catastrophe; I have said that publicly, and I cannot remember, but I believe I have said it on the floor. Ruby Ridge was one of the great tragedies of our western lives. I believe that hearings are going to be appropriate and we will hold them.

I hope that we will work this out so that we can work together on it rather than work apart.

Let me just add that I think it is the prerogative of the chairman, to determine when hearings within his committee's jurisdiction will be held. I intend to stand by that position—for a reasonable time but not a definite time—until after I see what happens in Oklahoma City. I do not want to put extraordinary pressure on the FBI at a time when they have extraordinary pressure on them anyway.

Especially with the understanding that Ruby Ridge and Waco will not go away, with the understanding that we are studying those matters now, and trying to figure out what would make the most effective and reasonable and worthwhile hearings on the subject, I feel we can withhold on hearings. I have no doubt that the administration and others with whom my colleague from Pennsylvania has spoken have informed him that if the Senate chooses to hold hearings, they will appear. I cannot, however, believe that they would take the position that hearings at this time, in the midst of the largest criminal investigation in history, are a priority for them.

I commend my distinguished colleague from Pennsylvania for his efforts in trying to move this issue forward. I hope he will work with me on it. If he will, we will get farther than if he does not. If he does not work with me, the Senate will vote on a sense-of-the-Senate resolution—a nonbinding resolution. I will determine when these hearings will be held. I just think it would be flying in the face of good law enforcement, flying in the face of reality, flying in the face of the need to hold hearings which are calm and deliberative, and flying in the face of the people who have died in Oklahoma City, who deserve a resolution to their problem, to hold Waco and Ruby Ridge hearings at this time.

Now, there are people who have died in Waco, and people who have died in Ruby Ridge, both law enforcement people and innocent people in those compounds, and they all deserve to have this matter fully reviewed. I intend to do so. But these are matters which require a comprehensive and full review—not a hurried hearing.

I intend to work with every member of the Judiciary Committee so that every member can have an opportunity to be part of the hearings, to have an opportunity to ask the questions, and hopefully they can during the time that will be allotted. It may take more than one day of hearings. In fact, it will probably take more than one day.

I have the commitment from the Director of the FBI and from the people at Justice that they will cooperate in those hearings. I have discussed with them the need to hold hearings and I have made it clear to them that we will hold them. And they, themselves, have indicated to me that they would like a little bit of time to finish the Oklahoma City matter before they have to divert their efforts and come up here for full-blown hearings before any committee of the U.S. Senate and, I believe, even the House of Representatives.

They will do it if we demand they do it. I just believe there is a time to have them do it. That time is not now, under the circumstances of Oklahoma City.

With that, I offer to work with the distinguished Senator from Pennsylvania and see what we can do to resolve this problem. I stand ready to work with him.

Mr. SPECTER. Mr. President, I ask unanimous consent that Senator KEMPTHORNE be added as an original cosponsor of the resolution.

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

Mr. SPECTER. Mr. President, when the Senator from Utah talks about patience, it seems to me that the American people have been patient long enough, since April 19, 1993. There has been ample time to hold these hearings, long ago.

As I said, I had asked for hearings shortly after the event itself. Had they been held in January or February or March or up to mid-April of this year, we would not be looking awaiting further action on Oklahoma City. It may be that we would not have looked at anything at Oklahoma City at all had the hearings been held earlier.

I do not know that that is so, but I think that when there is a request for patience, I think that there has already been an undue amount of patience on the matter. I do not think that it is impatient to say, "Do it by June 30." That is 41 days from May 10, as we stand here at the present time.

I discussed these hearings with the Director of the FBI, Louis Freeh, who was willing to proceed at this time and has no objection. The Attorney General of the United States has publicly stated that she is prepared for hearings.

When the Senator from Utah offers a resolution that "hearings should be held in the near future," my judgment is that is totally, totally, insufficient.

When he talks about time, and he says we should wait until we "catch and punish those responsible for Oklahoma City"—punishing them may take a matter of years. Some murder cases languish in the courts for up to 20 years. I do not think he necessarily means that, but if he is talking about waiting for punishment, even a trial would take months or more than a year.

When he talks about awaiting hearings in the House, "We will wait for the hearings in the House, if necessary to see if we proceed," the Senator from Utah is not even talking in a definite way about hearings after the House hearings. We will see after the House hearings, if necessary. I firmly believe that the Senate has an independent responsibility. We do not have to get involved in being a bicameral legislature. We have an independent responsibility to undertake these hearings.

When paragraph 12 of the resolution calls to hearings by the U.S. Senate to dispel public rumors that the "Oklahoma City bombing was planned and carried out by Federal law enforcement officials," that is a statement of the Director of the FBI himself. When Director Freeh was at lunch yesterday in the Republican Caucus he talked about rumors that the Federal Government itself had caused the bombing in Oklahoma City, and that he welcomed the hearings to dispel those rumors.

On two occasions the Senator from Utah has said that it is "My prerogative"—"My prerogative to decide when the hearings would be held." I think that that is customarily the situation. When we schedule subcommittee hearings, however, it is the prerogative of the chairman of the subcommittee to schedule the hearings.

Or, as I said, it would be conceivable to have hearings in the Intelligence Committee which has jurisdiction over terrorism matters. And a good bit of what we are considering now in the Judiciary Committee relates to the deportation or aliens, which is clearly a matter within the jurisdiction of the Intelligence Committee. As chairman, I could schedule them there, if we want to talk about prerogatives, but I have not done so because I think this is really a matter for terrorism as it is defined in the Terrorism Subcommittee of the Judiciary Committee. As I say, I would be glad to see the hearings held in the full committee, as was the hearing on April 27 after the notice had been given by the subcommittee for that hearing.

When we talk about the prerogatives of Senators, I think that is a little excessive, even if the Senators are chairmen, when we have a matter of public interest.

I am a little surprised by the statement by the Senator from Utah, again I wrote this down, that even if the resolution passes, "I am going to determine when to hold these hearings, unless the Senate orders me."

I do not know of any procedure for having an order or a mandamus, or direction of that sort under our Senate procedures, but the way we determine the will of the Senate is to have a sense-of-the-Senate resolution, which is what I have offered. It gives a lot of latitude as to when the hearings will be held.

So it is a little surprising to hear that the Senator from Utah is going to determine when to hold the hearings, whatever the sense of the Senate may be, unless the Senate issues some kind of an order. I know of no such procedure for such an order.

Mr. President, I am very much concerned about the officers, the Federal officials, who were murdered in Oklahoma City. I think every American is. I know the area very well.

I went to the University of Oklahoma, which is in Norman, 20 miles away, and have a lot of friends in Oklahoma City. It is a catastrophe of the first order. I think that we can best serve the public interest and best pay our respect to the victims in Oklahoma City and best pay our respect to victims of terrorism everywhere if we act and if we do what we can to clear the air on any notion which may be current in the country that there has been a coverup by the Federal Government, or a failure to act or a failure to look into what happened in Waco and Ruby Ridge.

I think this resolution is a very reasonable approach to the issue, deferring from the date of May 18, which the subcommittee has set, and deferring to the full committee. It is not a matter of who conducts the hearings. Let the full committee do it. But let us do it with reasonable promptness.

I think it is important that we not talk about personal Senatorial prerogatives or about being ordered to do something, not talk about conduct them "if necessary," after the House holds it hearings, or not talk about the vagaries of the near future. We need to set a time when at least we will let all Americans know we are going to move ahead, we are not stonewalling, and although we are not having the hearing on May 18, we will at least set a date that will give public assurance—that we will give the public assurance that we will let the chips fall where they may and there will be accountability in America regardless of how high the officials may be.

Mr. CRAIG. Mr. President, I strongly support the call for hearings into the Federal Government's handling of standoffs in Naples, ID and Waco, TX.

Some of my colleagues may remember I have been pushing for many months to get the Government to tell what it knows about the incident in my home State—often referred to as Ruby Ridge. I asked for an investigation of the incident, which was done; I pressed for release of the reports of that investigation, which is presently awaiting the consent of the local Idaho prosecutor; and in January, I asked for hearings in the Senate.

Government agents have already been disciplined for acts and failures to act at Ruby Ridge. Just a few weeks ago, the Deputy Attorney General released a list of problems that she thinks occurred there and asked the heads of three agencies to report how they are addressing these problems.

Yet there still has not been any public accounting as to what happened, nor answers to the questions that continue to multiply.

Mr. President, the public has a right to know. The Senate should hold hearings into this matter and into the handling of the Waco standoff, as well.

There are some who have suggested that now is not the time for these hearings. They say we should wait until Oklahoma City recovers, or until the polls show a more favorable political climate in the country, or some other goal is met.

At the same time, we have been hearing a lot in the press and even in this Chamber about the public's so-called "paranoia"—fear and mistrust of the Federal Government that is being labeled as irrational.

I should not need to remind my colleagues: fear breeds in ignorance. Mistrust is fueled by rumor. The worst thing this Congress could do to improve the situation would be to put these issues on the shelf or try to drive public discussion underground.

That is not the way a responsive, and responsible, representative body should operate. We depend upon our State and Federal authorities to maintain order and keep the peace, and we trust they will do so in a way that is consistent with the law and in keeping with the trust we have placed in them. Sometimes a line is crossed that runs the risk of breaking the trust and confidence Americans have place in our Federal law enforcement community.

Many across America fear such a line was crossed at Waco and at Ruby Ridge. That fear has only increased, not decreased, as the days and months have passed without an adequate Congressional response.

Surely everyone in this Congress would agree that it would be helpful to have answers to these questions before we respond to Federal law enforcement requests for greater powers and resources. Hearings in this area may well point out areas where additional help

is needed; conversely, they may point out areas where additional powers may contribute to the potential for abuse. And if Congress deserves to know the answers to these questions before making such an important policy determination, surely the public also deserves it.

Mr. President, it serves neither the law enforcement community nor the interests of civil liberties or delay addressing these incidents. We should hold hearings and seek answers to the legitimate questions that have been raised—and we should do it now, rather than allow the cancer of suspicion and mistrust to grow.

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

The PRESIDING OFFICER. The Senator's amendment is currently not pending for those purposes. It takes unanimous consent to order the yeas and nays on your amendment, Senator.

Mr. SPECTER. Mr. President, I ask unanimous consent that my amendment be considered as a freestanding resolution which, as I understand from the Parliamentarian, is permissible.

The PRESIDING OFFICER. It does take unanimous consent.

Mr. SPECTER. I ask unanimous consent it be considered as a freestanding resolution.

The PRESIDING OFFICER. In my capacity as a Senator from Minnesota, and acting as Chair, I do object.

Objection is heard.

Mr. SPECTER. I ask unanimous consent that the yeas and nays be ordered.

The PRESIDING OFFICER. Is there objection that it be in order to order the yeas and nays at this time?

Is there a sufficient second?

There is clearly not a sufficient second.

Mr. SPECTER. All Senators on the floor are voting in favor of the yeas and nays.

Come on now, Mr. President, I have seen the yeas and nays ordered with one Senator on the floor asking for the yeas and nays constituting a sufficient second.

The PRESIDING OFFICER. According to the Parliamentarian, a minimum of 11 Senators need to be on the floor for a sufficient second.

Mr. SPECTER. Parliamentary inquiry, Mr. President. Will the Parliamentarian represent that the yeas and nays have not been ordered in any case he has seen where fewer than 11 Members of the Senate have asked for the yeas and nays?

The PRESIDING OFFICER. Senator, there is not a record kept of that, according to the Parliamentarian. So the information would not be available.

Mr. SPECTER. I ask for his best recollection but not necessarily a record, Mr. President.

Mr. President, I ask unanimous consent that the yeas and nays be ordered.

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

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

CLOTURE MOTION

Mr. SPECTER. Mr. President, I send a motion to invoke cloture on the pending matter to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators in accordance with the provisions of rule XXII of the Standing Rules of the Senate do hereby move to bring to a close debate on the pending committee substitute amendment to S. 534, the solid waste disposal bill.

John H. Chafee, Bob Dole, Bob Smith, Jim Jeffords, Hank Brown, Kit Bond, Orrin Hatch, Spencer Abraham, Jon Kyl, Larry E. Craig, Kay Bailey Hutchison, Trent Lott, R.F. Bennett, Pete V. Domenici, Dirk Kempthorne, Jesse Helms.

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted:)

PRODUCT LIABILITY FAIRNESS ACT

Mr. DODD. Mr. President, today the Senate passed the Product Liability Fairness Act, which I have cosponsored, by an overwhelming vote of 61–37. For those of us who have been working on this issue for a long time—my involvement dates back to 1985—this is an historic day. With passage of this balanced measure, we have taken a huge step toward improving the product liability system for everyone—for the injured people who need fast and fair compensation, for consumers who need quality products to choose from, for those American businesses who are at the cutting edge of international competition, and for workers who depend on a strong economy to support their families.

I commend Senator ROCKEFELLER and Senator GORTON, and their staffs, for their heroic efforts on this measure. From drafting the legislation, to skillfully guiding it through a lengthy debate on the Senate floor, they have worked extremely effectively. Their success is reflected in the broad bipartisan coalition that supported the bill.

I also commend Senator LIEBERMAN, my colleague from my home State of Connecticut. He authored an important section on biomaterials. That provision is designed to ensure that manufacturers of life-saving and life-enhancing medical devices have access to raw materials. In recent years, the supply of raw materials has been threatened by litigation. This is a critical problem, and I commend Senator LIEBERMAN for crafting a promising solution.

Of course, like any compromise, this bill will not please everyone in all respects. I had drafted, for example, an amendment providing a different approach to punitive damages. under my amendment, the jury would determine whether punitive damages are appropriate, and the judge, guided by certain factors, would determine the amount. That procedure, in my view, offers a better approach to punitive damages than one which provides limits, or caps. Senators ROCKEFELLER and GORTON incorporated some aspects of my proposal in the final provision, and I appreciate their efforts on this difficult issue.

The final version of this bill does not contain a provision that I have supported in the past—the Government standards defense. One aspects of that defense, related to approval of drugs and medical devices by the Food and Drug Administration, was passed by voice vote in the House and will, I understand, be considered in conference. I ask unanimous consent that a number of letters supporting this provision be printed in the RECORD at the end of my remarks. As these letters point out, inappropriate punitive damages have convinced many corporate researchers to avoid the search for safer and more effective drugs.

Once again, I commend my colleagues, particularly Senators ROCKEFELLER and GORTON, for their bipartisan efforts on the Product Liability Fairness Act.

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

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
Washington, DC, April 25, 1995.

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC

DEAR SENATOR DODD: As a physician volunteer, I treat AIDS patients at the Whitman-Walker Clinic. The suffering that I see—and the threat of an ever-wider epidemic—convince me that the greatest gift anyone could give to society would be an AIDS vaccine. If I were the chairman of a philanthropic foundation, I would invest every dollar in vaccine research.

However, if I were CEO of a pharmaceutical company, knowing that the investment in my company represented the retirement and college savings of many of my stockholders, I wouldn't touch AIDS vaccine research with a ten-foot pole—until the liability issue has been successfully addressed.

Even the safest, most widely accepted vaccines entail risks—and potentially bankrupting liability burdens. Childhood vaccines are

available in adequate supply only because Congress passed the Childhood Vaccine Compensation Act. This came about only because several manufacturers got out of the business of manufacturing childhood vaccines due to liability concerns—raising fears of a dangerous scarcity.

In 1975, a man who got polio after changing his baby's diaper sued the manufacturer of the Sabin polio vaccine, which the baby had received. The risk of polio transmission was known, but small—about 1 in 1 million. Nevertheless, the jury awarded punitive damages. The award was later reversed, but only by the narrowest possible margin. The very fact that such a widely acclaimed health advance could expose a manufacturer to punitive damages would certainly give pause to any manufacturer considering research on an AIDS vaccine—which entails special liability risks.

With a preventive AIDS vaccine, people who are vaccinated will probably turn HIV positive—with all the social stigma and threat of job loss or insurance loss that this involves. There is a risk that a very small number of people will get AIDS from the vaccine. Additionally, there is the risk that the vaccine won't "take" in all cases and that some people who think they are protected may engage in risky behavior and come down with AIDS. All of these eventualities could result in lawsuits.

In the case of therapeutic vaccines for people who already have the disease, it would be very difficult to distinguish the symptoms of AIDS from any side-effects of the vaccine. And people with AIDS, prodded by unscrupulous lawyers, might easily be tempted to sue vaccine manufacturers.

Unless the liability threat is alleviated—at least by exempting manufacturers of FDA-approved products from punitive damages—developing an AIDS vaccine is decidedly a "no-win" proposition. This is outrageous, unfair, tragic—but true.

Sincerely,

JOHN D. SIEGFRIED, M.D.

MAY 2, 1995.

Hon. CHRISTOPHER J. DODD,
U.S. Senate,
Washington, DC.

DEAR SENATOR DODD: We are writing to ask that you vote in favor of a proposal that we believe will have a positive effect on research and development of new medicines and medical devices. American innovation is in trouble in the courts particularly in the high risk areas of reproductive health. Liability fears have caused the withdrawal of new drugs and medical devices that the Food and Drug Administration (FDA) considers safe and effective. We understand that when S. 565, the "Product Liability Fairness Act of 1995" is considered on the Senate floor, an amendment will be offered that would prevent juries from second-guessing the FDA's scientific decisions that a drug is safe insofar as punitive damages are concerned.

The proposed FDA-approval defense to punitive damages would establish a defense to punitive damages in tort actions involving drugs or devices approved by the FDA and subject to FDA regulation. The defense would apply only to punitive damages, and would not be available to a manufacturer that has withheld or misrepresented information to the FDA, including all required post-approval disclosure of unexpected adverse effects.

In the past twenty years, most companies have halted U.S. research on contraceptives and drugs to combat infertility and morning sickness. As a case in point, Bendectin, a morning-sickness drug, was removed from the market by its manufacturer in 1984 after more than 2,000 lawsuits were filed claiming it caused birth defects. Merrell Dow has spent over $100 million defending those suits and is still doing so. Even though almost every court which has looked at the issue has determined that there is no scientific evidence to support the contention that the drug causes birth defects, and even though Bendectin is still approved by the FDA for use in pregnancy, no manufacturer will risk making a morning sickness drug.

The 1970s brought more litigation over oral contraceptives than any other drug. In the early 1970s, there were 13 companies doing research and development on contraceptives. Eight of these were American. Today there are only two major U.S. companies doing such research. In 1990, a distinguished panel of scientists put together by the National Academy of Sciences noted that due to fear of lawsuits, the United States is decades behind Europe and other countries in the contraceptive choices it offers women.

In early 1994, because it had spent tens of millions of dollars defending against suits by people claiming injury from tempero-mandibular joint implants, DuPont announced it would no longer make polymers available to the medical device industry in the United States. These polymers are used in artificial hearts, pacemakers, catheters, hip and knee prostheses, and a host of other implantable devices. We have not even begun to feel the full impact of that decision.

The Senate is taking advantage of an unprecedented opportunity to fix a flawed product liability system. We ask that you include a reform that will encourage the development of better medical products without impairing the ability of people who are injured from recovering just compensation.

Sincerely,

NANCY SANDER,
Allergy and Asthma Network/Mothers of Asthmatics, Fairfax, Virginia.

PATRICIA TOMPKINS,
National Black Nurses' Association, Washington, DC.

DOROTHY I. HEIGH,
National Council of Negro Women, Inc., Washington, DC.

ADELE BAKER,
Wright, Robinson, McCammon, Osthimer and Taturn, Washington, DC.

SUSAN WALDEN,
Renaissance Women Foundation, Washington, DC.

NATIONAL FAMILY PLANNING & REPRODUCTIVE HEALTH ASSOCIATION,
Washington, DC, May 1, 1995.

DEAR SENATOR: As the Senate considers S. 565, "The Product Liability Fairness Act of 1995," we urge you to support a provision known as the FDA defense. With the FDA defense, companies would not be held liable for punitive damages in a lawsuit if the drug or medical device involved received pre-market approval from the FDA, and if the company fully complied with the FDA's rigorous requirements, which include specifying the warnings that companies must provide about their products and furnishing post-market reports on adverse reactions.

As an organization dedicated to expanding medical research and increasing access to products that can improve women's reproductive health, we know firsthand the extent to which the current liability system is impeding these important goals. In 1990, a distinguished panel of scientists put together by the National Academy of Sciences noted that due to U.S. Pharmaceutical companies fear of lawsuits, the United States is decades behind Europe and other countries in the contraceptive choices it offers women. An FDA defense would begin to turn the tide on this disturbing trend by encouraging research and development of products women need without impairing the ability of women who are injured by drugs and medical devices to recover just compensation.

We are deeply distressed that opponents of reform are mounting a fear-based campaign directed at women as their strategy to block change. A great deal of misinformation has been circulated concerning the impact of the FDA defense on women. We certainly recognize that women have had a painful history with medical products, such as DES and the Dalkon Shield, which have caused tragic injuries to women and their children. Opponents of an FDA defense are mistaken, however, in claiming this provision would have prevented plaintiffs from collecting punitive damages in these cases. In fact, the Dalkon Shield was on the market before the Medical Devices Amendment was adopted in 1976, and thus, was never approved by the FDA. As for DES, various manufacturers involved are alleged to have defrauded or withheld information from the FDA, and therefore would not be covered by the FDA defense.

The FDA defense would allow plaintiffs to obtain full compensatory damages and non-economic damages, including medical costs, lost wages, loss of functioning, and pain and suffering. We would not support the FDA defense if limited a plaintiff's ability to obtain full compensatory and non-economic damages in any manner. The FDA defense would limit only punitive damages. Also, the FDA defense would not be available to any company that is found to have lied or withheld information from the FDA or otherwise failed to comply with FDA rules.

The FDA defense is crucial given the current legal climate. A quick review of recent events clearly points out the impact of current policies. During the 1970s, there were 13 companies doing research and development on contraceptives. Eight of these companies were American. Today, only two American companies continue to conduct such research.

Given the current legal climate, it is easy to understand why companies are increasingly reluctant to make available products, despite their known therapeutic value. Two cases in point:

Bendectin, a morning sickness drug that was taken by over 30 million American women, was removed from the market by its manufacturer in 1984, after more than 2,000 lawsuits were filled claiming it caused birth defects. The manufacturer has spent over $100 million defending those lawsuits and is still doing so. Even though almost every court that has looked at the issue has determined there is no scientific evidence to support the contention that the drug causes birth defects, and even though Bendectin is still approved by the FDA for use during pregnancy, no other manufacturer will risk making a morning sickness drug.

Norplant, one of the most significant contraceptive developments of the past 20 years in the United States, was approved by the FDA in 1990. It is now the target of numerous cookie cutter, mass-produced class action lawsuits fueled by sensationalism and slick advertising directed at women. Despite the fact that Norplant continues to be supported by the medical community—as recently as a March 1995 endorsement by the American Society for Reproductive Medicine—many

women have been driven by unwarranted fears away from a safe and effective contraceptive product.

Punitive damages are meant to punish willful, flagrant, malicious or grossly illegal behavior. A company that has compiled in good faith with the FDA's regulations cannot be guilty of such behavior and should not be threatened with punitive damages. Nor should juries be permitted to second-guess the expert judgment of the FDA on whether the benefits of a drug outweigh the risks.

Increasingly, the legitimate concerns for the health and welfare of American women are being sidelined in the pursuit of large financial settlements. It is our view that inclusion of a FDA defense, similar to the one included in the House-passed product liability bill, would provide a much needed incentive for increased investment in women's health research and technologies. We believe this is a measured response and we urge you to adopt an FDA defense in any final product liability legislation.

Sincerely,

JUDITH M. DESARNO,
President/CEO, National Family Planning and Reproductive Health Association.

PHYLLIS GREENBERGER,
Executive Director, Society of the Advancement of Women's Health Research.

DENNIS BARBOUR, J.D.
President, Association of Reproductive Health Professionals.

LINDA BARNES BOLTON, DR. P.H., R.N, FAAN,
President, National Black Nurses' Association, Inc.

SUSAN WYSOCKI, RNC, NP,
President, National Association of Nurse Practitioners in Reproductive Health.

MAY 1, 1995.

Hon. CHRISTOPHER J. DODD,
SR-444 Russell Senate Office Building, Washington, DC.

DEAR SENATOR DODD: We have been asked to convey our views with regard to an amendment to H.R. 956, the Product Liability Fairness Act, to establish a defense to punitive damages for FDA-approved drugs and devices. Each of the undersigned has served at some time as Chief Counsel to the Food and Drug Administration. Each of us, in our current professional capacities, advises firms engaged in the manufacture of drugs and devices. However, the views expressed in this letter reflect our shared personal judgment.

The proposed defense to punitive damages for the marketing of medical products that meet applicable federal regulatory requirements makes eminent sense as a matter of public policy and can be expected to facilitate the development and continued availability of important products to treat and prevent serious disease and to address other significant health concerns. We describe below FDA's philosophy of new drug regulation and its powers in this area, which, we believe, strongly support the defense.

FDA exercises sweeping authority over the development, manufacture, and marketing of pharmaceuticals. Indeed, no other industry in this country is subject to such a comprehensive regulatory scheme. Pursuant to its statutory mandate, FDA requires premarket approval of all new drugs. A new drug may not be approved unless it has been shown to be safe and effective under the conditions of use described in its labeling.

In making their approval decisions, FDA physicians and scientists employ a risk-benefit standard. This standard recognizes that all drugs have unavoidable risks, some of them very serious. Therefore, FDA allows drugs onto the market only when the benefits from using a drug outweigh those risks. A drug's labeling is an important factor in making the approval decision. Once a drug is available, the treating physician, apprised of the recognized significant risks of a drug, can make an informed decision whether a drug is appropriate for use in a particular patient.

Inevitably, not all of the risks from a drug can be discovered prior to approval. While manufacturers are required to conduct extensive clinical trials, often in thousands of patients, some adverse events are so rare that they emerge only after a drug is in widespread use after approval. FDA therefore requires manufacturers to report all adverse events to the agency. The most serious of these must be reported within 15 days. FDA and the Justice Department have vigorously enforced the adverse event reporting requirements through a series of widely publicized criminal prosecutions.

FDA has the power to act swiftly and decisively when postmarket surveillance does identify a safety issue. The Secretary of Health and Human Services can immediately suspend approval of a drug that poses an imminent hazard, prior even to granting the manufacturer a hearing. FDA also can compel labeling changes to incorporate new safety information. As a practical matter, formal action under any of these authorities is rarely necessary because, in our experience, companies generally comply voluntarily with agency requests.

With this context, the desirability of the punitive damages defense is readily apparent. Where manufacturers have complied with all of FDA's approval, labeling, and safety reporting requirements, they should not be open to punishment through the imposition of punitive damages. This defense does nothing to restrict the availability of compensatory damages. Injured persons will still be made whole for their losses under the law. And they will even be able to recover punitive damages in cases where their injuries were caused by violations of FDA regulations. The defense simply recognizes—as a clear rule—that manufacturers who comply with FDA's comprehensive regulatory process do not manifest the type of willful misconduct that could merit punitive damages.

While we recognize that the imposition of punitive damages is a comparatively rare (but by no means unknown) event, the threat of punitive damage awards skews the entire litigation process and, with it, the process for developing new drugs and making them available to the public. Pharmaceutical manufacturers have withdrawn beneficial products from the market and have ceased promising research because of this threat. Congress is now in the position to remove this obstacle and thereby to make a genuine contribution to the public health. We therefore urge you to support the FDA approval amendment to H.R. 956.

Sincerely,

THOMAS SCARLETT,
Hyman Phelps & McNamara, Chief Counsel—1981–89.

NANCY L. BUC,
Buc Levitt & Beardsley, Chief Counsel—1980–81.

RICHARD A. MERRILL,
Covington & Burling, Chief Counsel—1975–77.

RICHARD M. COOPER,
Williams & Connolly, Chief Counsel—1977–79.

PETER BARTON HUTT,
Covington & Burling, Chief Counsel—1971–75.

CONGRATULATING SENATOR DOLE ON THE EISENHOWER LEADERSHIP PRIZE

Mrs. KASSEBAUM. Mr. President, last night my colleague from Kansas, Senator DOLE, received the prestigious Eisenhower Leadership Prize in recognition of his distinguished service to the United States. I have long admired Senator DOLE for his leadership and dedicated service and am pleased that the Eisenhower World Affairs Institute and Gettysburg College recognized him with such a high honor.

This prize is made all the more notable because Dwight D. Eisenhower, the award's namesake, is a fellow Kansan and Senator DOLE's hero. I add my voice to the many who congratulate him on this honor and ask unanimous consent that the remarks Senator DOLE gave last night be printed in the RECORD.

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

I want to thank the Trustees of The Eisenhower World Affairs Institute and Gettysburg College for this honor.

I am truly humbled to receive this award. And I thank the Awards Committee for dipping down in the military ranks. The first Leadership Prize went to General Scowcroft. The second to General Colin Powell. Last year you honored Major Lloyd Bentsen. And this year, you're down to Lieutenant Bob Dole. I guess there's still hope for all you Privates out there.

A special word of thanks to my colleagues from the 10th Mountain Division who joins us this evening. I've always wondered why they assigned a kid from the plains of Kansas to the 10th Mountain Division. But I've never wondered about the men I served beside. You are all heroes in my book.

A few years back, the 10th Mountain veterans formed a national association. Over the years, there have been five Presidents of the Association, and I am honored that all five are here this evening. At least they got to be President of something.

I am also honored by the presence of many friends and colleagues of President Eisenhower and of several members of the Eisenhower family.

I have been privileged to get to know John on several occasions—including the Eisenhower Centennial in Abilene in 1990, and a few years ago in the Capitol when we unveiled the sign which marks the Eisenhower Interstate Highway System.

Elizabeth and I are very proud to call David and Julie Eisenhower our friends. We've also had the pleasure of meeting their children, and can tell you that David and Julie are as good as parents as they are authors.

And Mary Eisenhower Atwater was the one who came to my office last year to inform me of my selection as the recipient of this prize. The only promise I had to make to her was that my acceptance remarks would be brief.

In fact, I am tempted to do this evening what Ike did one evening when he was President of Columbia University. At the end of a

long evening of speeches, Eisenhower's turn came. After being introduced, he stood up and reminded his audience that every speech, written or otherwise, had to have a punctuation. He said, "Tonight, I am the punctuation. I am the period." And he sat down. He later said that was one of the most popular speeches he ever gave.

It is a bit intimidating to talk about President Eisenhower and his legacy before family members and friends and who knew him much better than I.

I can say, however, that, like countless Kansans and countless Americans, I not only "liked Ike," I regarded him as a hero. I will never forget the first time I saw him. It was the spring of 1952. I had just finished law school, and was serving in the Kansas House of Representatives. General Eisenhower had come home to Abilene to officially launch his Presidential campaign, and I was in the rain-soaked audience that greeted him.

That campaign was, of course, wildly successful. And I took it as a good omen that my official announcement in Topeka on April 10 had to be moved indoors because of rain.

I did have the privilege of meeting my hero on several occasions during his lifetime, but the truth is I knew him no better than the countless soldiers who called him our general, and the millions of Americans who called him our President.

Eisenhower succeeded as a soldier and as a President for many reasons. Intelligence. Courage. Honesty. Leadership. The ability to place the right people in the right spots. These were all qualities Ike possessed.

But as I look at the Eisenhower statue in the reception area of my Capitol office, or the painting of Ike that hangs behind my desk, one word often comes to mind. And that word is "Trust."

Ike inspired trust as no leader has before or since. Millions of Americans may have voted for Adlai Stevenson in 1952 and 1956, but everyone trusted President Eisenhower to do what was best for America.

And there's a simple reason why America's citizens trusted Ike. And that's because he trusted America's citizens. Don't get me wrong. President Eisenhower believed in government—our Interstate Highway System is proof of that. But, moreover, Ike believed in citizens. He believed in the wisdom of the American people.

When Ike looked at America's people he saw himself. According to David Eisenhower, the title that meant the most to his grandfather was not "Supreme Commander," or "President;" rather it was the simple title that all Americans share: The title of "citizen."

And David reminded me of a speech Ike made in London the month after VE Day. Ike said, "To preserve his freedom of worship, his equality before law, his liberty to speak and act as he sees fit, subject only to provisions that he trespass not upon similar rights of others—a Londoner will fight. So will a citizen of Abilene."

Throughout World War II, Ike saw himself as someone who would do what any American citizen would do when freedom was at risk. And throughout his Presidency, Ike spoke of how all of us shared with him the responsibility of guiding our country.

As Ike said in his first Inaugural address, "We are summoned to act in wisdom and in conscience, to work with industry, to teach with persuasion, to preach with conviction, to weigh our every deed with care and with compassion. For this truth must be clear before us: Whatever America hopes to bring to pass in the world must first come to pass in the heart of America."

What do those words mean in the America of 1995? I believe they mean we should rededicate ourselves to remembering the duties of citizenship: To keep informed and to become involved in the decisions that affect the life and future of all the citizens of our country.

And they also mean that government should trust the American people with decisions that matter most—the decisions that affect their families and their businesses.

To be sure, the 1950's weren't perfect. And as we look to the 21st century, we should not seek to return to those times. But what I hope America can return to is a relationship of trust between the people and their government. And if that's to happen, then we must rein in the federal government. It's too big, too intrusive, and makes too many decisions. I carry a copy of the 10th Amendment with me wherever I go. It's only 28 words long. And it basically states that all powers not specifically delegated to the federal government should be given to the states, and to the people. Dusting off that amendment, and restoring it to its rightful place in the Constitution is my mandate as Majority Leader, and I like to think that it's a mandate that Ike would have heartily endorsed.

Perhaps Ike said it best when he responded to those who were urging bigger and bigger government, all in the name of providing Americans with security.

"If all that Americans want is security, they can go to prison," Ike said. "They'll have enough to eat, a bed, and a roof over their heads.

But he went on to say that citizens want more than security. We also want freedom. We want dignity. We want control of our lives. We want our government to trust us. And the lesson that Ike taught us is that if the American people believe our government trusts us, then we will trust our government in return.

Americans also trusted Ike because he trusted us with the truth. As Supreme Commander, Ike never hid the truth from his soldiers. If a mission was dangerous * * * if some wouldn't be coming home, then Ike laid it on the line. And, with his Kansas candor, he spoke about issues that many in Washington today shy away from. One of those was the federal budget.

How much stronger our country would be if our leaders took to heart the prophetic words that Eisenhower spoke in his 1961 farewell address to the American people:

Ike said, "As we peer into society's future, we must avoid the impulse to live only for today, plundering for our own ease and convenience the precious resources of tomorrow. We cannot mortgage the material assets of our grandchildren without risking the loss also of their political and spiritual heritage. We want democracy to survive for all generations to come, and not to become the insolvent phantom of tomorrow."

As always, Eisenhower matched his words with actions. There have been four balanced federal budgets in the last half century. And Ike gave us three of them. He knew that it was easy to be popular. It is easy to say "yes" to every federal program. But he also knew that more important than being popular for a moment is to provide leadership that stands the test of time.

Along with trusting the American people, Ike also trusted the values that built our country, and that were instilled in him by his parents in Abilene. Values like hard work. Honesty. Personal responsibility. Common sense. Compassion for those in need. And, above all, love of family, God, and country.

These are the values that built America, and they are values that must never go out of fashion, or be regarded as "politically incorrect," by our government or by those in our entertainment industry.

Along with trusting our citizens, and trusting our values, there's one final lesson about trust that Eisenhower's life and career can teach us. And that's the fact that the world must always be able to count on American leadership.

And that's a lesson I hope we especially remembered yesterday, the 50th anniversary of VE Day. It was American leadership that built the arsenal of democracy which made that victory possible. It was American leadership that held the Allies together during the darkest days of the war. And it was American leadership which conquered the forces of tyranny and restored liberty and democracy to Europe.

Make no mistake about it, leadership carries a price. It did during World War II. It did during the Eisenhower Administration. And it does today. But it is a price worth paying. As Ike said in his Second Inaugural Address, "The building of * * * peace is a bold and solemn purpose. To proclaim it is easy. To serve it will be hard. And to attain it, we must be aware of its full meaning—and ready to pay its full price.

And Ike never forgot just what that full price meant. He said that whenever he returned to Normandy after the war, his foremost thoughts were not with the planes and the ships or the guns. Rather, he said, "I thought of the families back home that had lost men at this place."

I was privileged to walk the beaches of Normandy and to return to the hills of Italy where I saw action during the D-Day commemorations last June. And I, too, thought of the families back home that had lost men, and how we must never forget the cause for which they fought and died. And the only way to ensure that future generations of Americans will not be buried on foreign land, is to continue to provide leadership whenever and wherever it is needed.

Ladies and gentlemen, I am honored by the confidence bestowed in me through this leadership award and will do my best to meet the high expectations left by the legacy of Dwight Eisenhower.

In closing, I want to share with you a few more words of this American hero—and they were words he spoke on that rainy day in Abilene 43 years ago.

Returning home led Ike to think about growing up in Kansas, and he said "I found out in later years we were very poor, but the glory of America is that we didn't know it then: all that we knew was that our parents * * * could say to us, "Opportunity is all about you. Reach out and take it."

By working together and trusting one another, we can ensure that for generations yet to come, America's parents will still be able to say those words to their sons and daughters. This is what we owe to the memory of people like Dwight Eisenhower and all the GIs of World War II we remembered yesterday. But ultimately, we owe it to ourselves, to our children, and to the future of the country we love.

FREEDOM SHRINE FOR THE HOT SPRINGS VA MEDICAL CENTER

Mr. PRESSLER. Mr. President, an exciting event recently took place in

the southern Black Hills of South Dakota. The Freedom Shrine, a collection of documents from U.S. history, was dedicated at the Hot Springs VA Medical Center in Hot Springs, SD.

I commend Maurice Wintersteen, the Exchange Club of Rapid City, and Hot Springs VA Director Dan Marsh, for their efforts to bring the Freedom Shrine to Hot Springs. Late last year, Maurice Wintersteen approached the Exchange Club of Rapid City about sponsoring a freedom shrine in the local VA Hospital. The Exchange Club of Rapid City agreed to his request, and Director Marsh threw his full support behind the project.

As a result of their dedicated efforts, the Freedom Shrine became a reality and was placed in the rotunda of the VA Domiciliary Building. The Freedom Shrine displays reproductions of 28 historic American documents, including the U.S. Constitution, President Lincoln's Gettysburg Address, and President Kennedy's Inaugural Address. It is my understanding the Hot Springs VA Hospital is the only VA facility in the Nation to have such a freedom shrine.

It is very fitting that the Freedom Shrine was dedicated on the 50th anniversary of the death of President Franklin Roosevelt—the man who led a worldwide alliance against a tyranny that threatened freedom-living people throughout the world. The Freedom Shrine serves as an essential reminder to all Americans that the freedom we enjoy today is the direct result of the enormous effort and sacrifice of our forefathers, from the pioneers who first settled the Nation, to the veterans who gave their lives to defend it and the values we stand for. We must never forget the precious gift they gave us. It is ours to preserve for future generations.

Inspired by the Freedom Train that toured the United States with American historical documents after the Second World War, the National Exchange Club resolved to display documents from U.S. history in communities throughout the Nation so that Americans of all ages would have easy access to the rich heritage of their past. Since 1949, many freedom shrines have been installed by exchange clubs in various communities across the Nation, Puerto Rico, and at American outposts around the world. From State capitols to U.S. warships, and hundreds of schools across the Nation, freedom shrines serve as an invaluable reference for students and other citizens seeking information or inspiration from these historic treasures.

Again, I congratulate the Exchange Club of Rapid City, Maurice Wintersteen, Hot Springs VA Director Dan Marsh, and all our veterans for their ongoing commitment to the preservation of American principles. Their deep pride in the history, traditions, and values of our great State and Nation are reflected in the Freedom Shrine. Most important, they have given present and future generations of South Dakotans a precious and lasting gift. I salute everyone involved with this inspiring project.

THE FUTURE OF THE B-1B BOMBER IS SECURE

Mr. PRESSLER. Mr. President, last week the Pentagon released a much-anticipated report by the Institute for Defense Analyses [IDA] on our Nation's heavy bomber force structure. This report, the heavy bomber study, examined the deployment options of our long-range heavy bomber forces—in association with additional tactical forces—under the circumstances of two hypothetical, nearly simultaneous world conflicts. To date, the IDA study is the most comprehensive, in-depth analysis of the use of our Nation's three heavy bombers—the B-1 bomber [B-1B], the B-2 stealth bomber, and the B-52—in a conventional war-fighting role.

I am pleased that the IDA study confirmed what I have said for quite some time: The B-1B is an efficient and effective long-range bomber, and it can be used successfully as the centerpiece of American airpower projection. The IDA study suggests that planned conventional upgrades to the B-1B would be more cost-effective than purchasing 20 additional B-2 bombers. Further, the study recommends that remaining B-2 bomber production preservation funds should be reallocated to other weapons and conventional upgrades. That would allow for a total bomber force consisting of 95 B-1B's, 66 B-52's, and 20 B-2's.

As my colleagues know, the B-1B was developed and built at the height of the cold war. Thus, it was anticipated that its function would be limited to meeting one of several nuclear options. However, the B-1B has shown to be an effective conventional force component—a testament to designers, Air Force strategists and pilots who recognized the versatility of this aircraft.

Time and again, the B-1B has had to meet new challenges. For example, the 1994 congressionally mandated assessment test of the B-1B, performed by the 28th Bomber Wing at Ellsworth Air Force Base and code named the Dakota Challenge, measured the readiness rate of one B-1B bomber wing when provided fully with the necessary spare parts, maintenance equipment, support crews, and logistics equipment. The Dakota Challenge found that a fully funded B-1B wing could maintain an unprecedented 84 percent mission capable rate. In addition, improvements were seen in other readiness indicators, including the 12-hour fix rate—a measure of how often a malfunctioning aircraft can be repaired and returned to the air within one half day.

By meeting a number of different challenges, the B-1B has earned justifiably the designation as the workhorse of the heavy bomber fleet.

Based on the analysis of the IDA report, the B-1B should assume a prominent role in our Nation's defense. The study recognizes that maintaining the B-1B as the workhorse of the heavy bomber fleet would yield the highest return on our defense investment and render the most cost-effective contribution to our Nation's heavy bomber requirements. With continued investments in weapons upgrades, I believe the B-1B will be an outstanding and effective conventional heavy bomber capable of projecting America's air power into the next century.

Mr. President, over the next several decades, the United States increasingly will be forced to respond rapidly and decisively to regional security threats around the globe. Holding 36 world records for speed, payload, and distance, the B-1B is uniquely suited to meeting our Nation's present and future defense challenges. In this period of budget constraints, I urge my colleagues to consider carefully the recommendations in the IDA Heavy Bomber Study before casting their vote on any defense measures affecting our heavy bomber force structure.

WAS CONGRESS IRRESPONSIBLE? THE VOTERS HAVE SAID YES

Mr. HELMS. Mr. President, before contemplating today's bad news about the Federal debt, let us do that little pop quiz once more. You remember—one question, one answer:

Question: How many million dollars are in $1 trillion? While you are arriving at an answer, bear in mind that it was the U.S. Congress that ran up the Federal debt that now exceeds $4.8 trillion.

To be exact, as of the close of business Tuesday, May 9, the exact Federal debt—down to the penny—stood at $4,853,699,696,611.41. This means that every man, woman, and child in America now owes $18,424.73 computed on a per capita basis.

Mr. President, back to the pop quiz: How many million in a trillion? There are a million million in a trillion.

HONORING MARGARET STANFILL FOR BRAVERY AND SERVICE DURING WORLD WAR II

Mr. ASHCROFT. Mr. President, I rise today to salute a Missourian who has distinguished herself for her bravery while in service to her country, Margaret Stanfill of Hayti, MO. As a nurse serving in the U.S. Army Nurses Corps during the Second World War, Margaret served her country with unprecedented bravery and dedication while participating in some of the greatest Allied successes of the war.

Margaret Stanfill was documented as the first American nurse to arrive on

the beaches of Normandy during the Allies' D-day invasion of France on June 6, 1944. The wire service accounts of the invasion reported that the first nurses to arrive by barge, "waded ashore while battle-weary soldiers blinked in astonishment." The nurses, led by Margaret Stanfill and clothed in two layers of men's uniforms with steel helmets, went to work immediately setting up dressing stations in pup tents and ministering to the wounded. Many of the wounded were paratroopers injured as part of the initial assault. I rise today to salute Margaret's bravery and leadership, not only at Normandy, but throughout her life.

Margaret Stanfill grew up in Hayti, in the bootheel of southeastern Missouri near the Tennessee border, graduating from Hayti High School in 1938. While in high school Margaret was a 4-year member of the basketball team, serving 1 year as team captain. She was also a 4-year member of the Hayti High School tennis team and was county high school's girls singles champion. After graduation, Margaret entered nurses training at the Baptist Hospital in Memphis, TN, graduating from there in 1940. After a year in private nursing, Margaret felt the call of service end entered the U.S. Army Nurses Corps, training at Camp Tyson.

Margaret arrived in England for additional training on August 1, 1942. By November of that year, she was among the first nurses to arrive on shore during the Allied invasion to liberate North Africa. The scenes of Margaret and her surgical operating unit being carried ashore from barges on the shoulders of their male colleagues appeared in news reels shown around the world. Her unit followed the Allied advance through North Africa into Sicily, where Margaret followed the infantry onto European soil at the invasion of Italy before returning to England for further training preceding the D-day Invasion.

Margaret Stanfill returned from the war and married Wick P. Moore, an Army captain she served with during the North Africa campaign. They settled down in Texas and had three children, two sons and a daughter. I once again salute Margaret Stanfill Moore for her service and bravery in playing a role in some of the most crucial events in the history of our Nation and our world. Her love of freedom and willingness to give of herself and her talents for her country sets an example of service of which all of us can be proud.

NONPROFIT HOSPITALS

Mr. SPECTER. Mr. President, many may believe that health care reform is not an issue in the 104th Congress. But I have been advocating reform in one form or another throughout my now 15 years in the Senate, and I continue to do so. I have come to the floor on 14 occasions over just the last 3 years to urge the Senate to address health care reform. On the first day the Congress was in session in 1993 and again on the first day in 1995, I introduced comprehensive health care legislation. The Health Care Assurance Act of 1995, S. 18, which I introduced on January 4 of this year, is comprised of reform initiatives that our health care system needs and can adopt immediately. They are reforms which can both improve access and affordability of coverage and health care delivery and implement systemic changes to bring down the escalating cost of care. Today, I again address my colleagues on the issue of health care access. I want to bring to the Senate's attention a particular component of our health care delivery system which is uniquely poised to provide innovative services which respond to the particular needs of individual communities, but which is in jeopardy—nonprofit hospitals.

In my view, it is indispensable that there be comprehensive affordable, accessible health care for all Americans. I believe the essential question is whether we have sufficient resources; that is, medical personnel and hospital, laboratory, diagnostic and pharmaceutical facilities to deliver services. I think we do; and nonprofit hospitals are an important resource of innovative, community-based care. Well over 80 percent of the hospitals in this country have been and are nonprofit institutions. Most nonprofits were founded decades ago and arose from religiously or ethnically identified groups and so were dedicated to serving a particular community. Most have adhered to this dedication to community and all of them serve without restriction or preference. There are approximately 80,000 voluntary trustees, leaders in their respective communities giving freely of their time, their energies, and their money to raise the level of health care in those communities. However, I am concerned that recent trends in the health care market, including the growth of large for-profit hospital systems, and the emphasis on costs and profits of many managed care organizations as they become economically dominant, threaten the community health focus of nonprofit hospitals.

We stand at the threshold of dramatic breakthroughs in understanding, preventing, and treating a variety of diseases. Clinical application of the breakthroughs in research will yield wondrous results which will alleviate human suffering, prolong life, and produce enormous savings in medical costs in the United States. Nonprofit hospitals are essential to the application of these breakthroughs for the prevention and treatment of disease. The community outreach programs typical of nonprofit hospitals demonstrate their dedication to the needs of their particular communities. They are uniquely attuned to the most fiscally and personally debilitating diseases of a community and therefore provide the services for treatment and prevention most demanded in the community. Prevention is the most successful method of containing the costs associated with disease as it is the first step toward controlling disease. But the health care system today appears to be making it more difficult for the nonprofit community hospital to be dedicated to prevention and accessible treatment for the survival of patients.

While the demand to be competitive is increasing, hospitals' resources are dwindling. Changes in the health care system have reduced hospital occupancy, and have therefore reduced revenue. The Washington Post reported on March 14, 1995, that hospitals have quadrupled the number of out-patient surgical procedures and same-day procedures now exceed the number requiring overnight stays. Health care experts cite technological advances as well as cost-cutting efforts by insurance companies as two key factors which have encouraged the growth in outpatient services. For-profit hospitals tend to exclude those from coverage and service who cannot afford to pay and minimize nonrevenue generating outreach programs.

On the other hand, nonprofits are committed to their missions to provide high-quality service, thus increasing expense, but not necessarily increasing revenue. The limited revenues which once could be used for outreach and prevention are being reallocated to meet today's specialized care needs, and at the same time hospitals are being forced to compete with one another to maintain their existence.

As we continue to discuss the reform of our health care system, we must reconcile the two forces which drive provision of hospital care today, that is profitability and quality. Hospitals should be able to continue to operate as a community resource, to provide preventive medicine, not only curative medicine. As I have said, prevention is the most economical cure for what ails our health care system, that is escalating costs for short- and long-term treatment. Prevention and early detection are the most successful methods of controlling costs associated with disease as they are the first steps toward preventing the inevitable need for costly treatment incurred by disease.

In S. 18 I have taken such steps through streamlining the statutory provisions related to the right to decline treatment, increasing Federal support for clinical trials at the National Institutes of Health, and increasing public health programs at the State and local levels. I look forward to working and reconciling the competing forces in our health care system today to ensure the continuation of community-based and -focused prevention and treatment services, such as

those historically provided by non-profit hospitals.

CHINA'S OBLITERATION OF TIBET

Mr. LEAHY. Mr. President, 7 years ago I visited Tibet, a land of striking beauty whose people are among the most inspiring and interesting I have ever had the privilege to meet. Most of the photographs of Tibet, I had seen before my visit, were of the jagged Himalayan Mountains, Buddhist monks, and a sleepy, poor country of subsistence farmers and their herds of yaks. There is another Tibet, which many people may not be aware of.

It was with great sadness that I and my wife Marcelle saw first hand the effects of China's ruthless, systematic campaign to obliterate Tibetan culture and Tibetan life. We met some of the Tibetans who had suffered under Chinese occupation, and saw the empty palace of His Holiness the Dalai Lama, who lives in exile in India and who I have had the honor of meeting several times. Since our visit, and despite international condemnation, China's campaign of cultural annihilation has steadily progressed.

A recent article in Newsweek magazine describes the genocide. Tibet is being overrun by the Chinese. According to the article, Lhasa, Tibet's capital, is now at least 50-percent non-Tibetan. Buddhist monasteries have been destroyed, the Tibetan language is suppressed, and Tibet's natural resources have been plundered.

There are 60,000 Chinese troops in Tibet, whose job is to instill fear and quell any dissent. Public gatherings are monitored with video cameras, and protesters are quickly arrested before they attract attention.

Mr. President, Tibet is perhaps the most vivid example of why the Chinese Government is widely regarded as among the world's most flagrant violators of human rights. A decade from now, if current trends continue, the only thing left of Tibetan culture may be a memory. Even today it may be too late to prevent that result, since it would take a major, international campaign to turn back the Chinese tide. I, for one, would welcome such a campaign, because I believe we have a responsibility to try to protect endangered peoples whose existence is threatened with cultural genocide.

I ask unanimous consent that the Newsweek article be printed in the RECORD.

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

[From Newsweek, Apr. 3, 1995]

CHINA INVADES TIBET—AGAIN

(By Melinda Liu)

Chip * * * chip. That's the sound of Tibetan civilization being hacked away. Below Lhasa's imposing Potala Palace, home of the exiled Dalai Lama, Chinese stonemasons chisel granite that will pave a vast new plaza with government monuments. The ancient downtown, some of it dating from the seventh century, has already suffered a terminal face-lift. The 1,000-room Potala is now surrounded by hair-dressing salons, chain-smoking prostitutes and karaoke bars blaring Madonna music. Streets that once housed traditional Tibetan tea shops have given way to rows of greasy Chinese eateries run by recent arrivals from China's interior. Just outside the capital, young Tibetan boys scavenge at a new open dump piled high with trash. "The Chinese keep coming," complains one Lhasa resident, "especially those who can't find jobs anywhere else."

The Chinese are invading Tibet—again. Four decades after the People's Liberation Army seized the kingdom and crushed an uprising by the followers of the Dalai Lama, Beijing has found a more effective method of conquest: money. In 1992 the government lifted controls on Chinese migration to Tibet, then made it worthwhile by offering jobs that paid two or three times the rate of the same work in China's interior. Last year alone Beijing invested some $270 million in 62 projects—including the plaza near the Potala and a solar-powered radio and TV station that will broadcast Communist Party propaganda in Tibetan. As a result of these inducements, Lhasa's population is now at least 50 percent non-Tibetan, according to Western analysts.

Locals might not mind so much if they thought they were getting more of the economic benefits. Tibet—which means "Western treasure house" in Mandarin—has long been plundered for its gold, timber and other resources and remains unremittingly poor. Many Tibetans still live a nomadic hand-to-mouth existence. Working herds of shaggy yaks in the summer and retreating to the capital in the winter to seek alms until the winter snows subside, they earn less than $100 per year. But now maroon-robed monks compete with Chinese beggars for spare change. Lhasans also grumble that most new entrepreneurial opportunities go to outsiders. Government funds are "inextricably linking Tibet's economy with the rest of China," argues Prof. Melvyn Goldstein, a Tibet scholar at Case Western Reserve University. "This has also resulted in non-Tibetans controlling a large segment of the local economy at all levels, from street-corner bicycle repairmen to electronic-goods-store owners and firms trading with the rest of China."

Gawking nomads: Newcomers have a significant advantage over locals—connections in the Chinese interior. In landlocked Tibet, the best consumer goods were smuggled in from Nepal only a decade ago. Now Chinese Muslim (Hui) peddlers in the vegetable market hawk chicken eggs trucked in from Gansu province, bananas from coastal Guangdong and Lux soap made in Shanghai. Chinese shopkeepers prefer to sell to other Chinese and seem openly disdainful of Tibetans, sometimes grabbing a broom to shoo out gawking nomads who spend too much time fiddling with the merchandise.

The tension inevitably erupts. Recently a local sat down in a Hui restaurant to a meal—and pulled from his plate of dumplings what Xinhua news agency called "a long fingernail." The disgusted diner shouted to his friends, "They're serving human flesh!" After the enraged restaurateur attacked them with a metal bar, some Khampas from eastern Tibet joined the brawl. The fighting spilled into the street for a while, and resumed the next day. When it was over, several Hui shops had been vandalized; a dozen Tibetans were arrested. The provocations continue. On Lhasa's streets, Chinese vendors sometimes prepare dog meat in plain view of passersby—an outrageous affront to Tibetans, who believe that dogs are reincarnated as people. "The potential for overreaction," says a Western diplomat in Beijing, "is great."

Government officials dismiss the idea that China is obliterating Tibetan culture. "That's sheer fabrication," snaps Raidi, deputy Communist Party secretary of Tibet, who is Tibetan. He claims that Chinese people constitute less than 3 percent of Tibet's population of 2.2 million—neglecting to mention the 60,000 PLA troops and 50,000 or more migrants in the region. The official press blames Tibet's troubles on a "psychology of idleness." There are now more monks and nuns than high-school students, the Tibet Daily, a Communist Party mouthpiece, recently pointed out. "Such a huge number of young, strong people are not engaged in production. * * * The negative influence on economic and ethnic cultural development is self-evident."

But Beijing continues to undermine Tibet's self-sufficiency. Designated as an "autonomous region," Tibet is anything but. Its religious life, as well as its economic and political fate, depends entirely on Beijing. Chinese authorities recently dropped a commitment to mandate the use of the Tibetan language in government offices. "Tibetans can speak Tibetan at home and at work," says a Lhasa intellectual who has a government job. "But in order to get ahead, you must speak Chinese."

The influx of Chinese people has a political purpose, too—to muffle calls for independence. Many Lhasa residents blame Hui shopkeepers for harboring police during separatist demonstrations back in 1989, and for supporting the brutal crackdown that followed. Today, closed-circuit video cameras monitor activities at major intersections in the Tibetan quarter, around the markets near the fabled Jokhang temple, even in the altar rooms of the Potala Palace. Police pounce on protesters before they can attract crowds. The intimidation seems to be working. "The Chinese are more clever than we Tibetans," says an educated Lhasan. "So they get all the good jobs. They work very hard, even moving mountains when they want to." Beijing's most potent weapon is to make Tibetan culture seem worthless—even in a Lhasan's eyes.

REPORT ON THE EMERGENCY WITH SERBIA AND MONTENEGRO—MESSAGE FROM THE PRESIDENT—PM 46

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to

continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the emergency declared with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), as expanded to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, is to continue in effect beyond May 30, 1995.

The circumstances that led to the declaration on May 30, 1992, of a national emergency have not been resolved. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) continues to support groups seizing and attempting to seize territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence. In addition, on October 25, 1994, I expanded the scope of the national emergency to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina. The actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and the authorities in the territory that they control pose a continuing unusual and extraordinary threat to the national security, foreign policy interests, and the economy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to apply economic pressure to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and to the Bosnian Serb forces and the authorities in the territory that they control to reduce their ability to support the continuing civil strife in the former Yugoslavia.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

REPORT OF PROPOSED LEGISLATION ENTITLED "THE GUN-FREE SCHOOL ZONES AMENDMENTS ACT OF 1995"—MESSAGE FROM THE PRESIDENT—PM 47

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary.

To the Congress of the United States:

Today I am transmitting for your immediate consideration and passage the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in *United States* v. *Lopez.*

In a 5–4 decision, the Court in *Lopez* held that the Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified at 18 U.S.C. 922(q). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of *Lopez* and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in * * * commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in * * * interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm.

I am committed to doing everything in my power to make schools places where young people can be secure, where they can learn, and where parents can be confident that discipline is enforced.

I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

MESSAGES FROM THE HOUSE

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill; in which it requests the concurrence of the Senate:

H.R. 1139. An act to amend the Atlantic Striped Bass Conservation Act, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution; in which it requests the concurrence of the Senate:

H. Con. Res. 64. Concurrent resolution authorizing the 1995 Special Olympics Torch Relay to be run through the Capitol Grounds.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1139. An act to amend the Atlantic Striped Bass Conservation Act, and for other purposes; to the Committee on Commerce, Science, and Transportation; pursuant to the order of May 9, 1995, that if and when reported by the Committee on Commerce, Science, and Transportation the bill be referred to the Committee on Environment and Public Works for a period not to exceed 20 session days to report or be discharged and placed on the calendar.

The following bill, previously ordered held at the desk, was referred to the Committee on Foreign Relations:

S. 770. A bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

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–93. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Agriculture, Nutrition, and Forestry.

"ENGROSSED HOUSE JOINT MEMORIAL 4004

"Whereas, approximately two-thirds of the farmgate value of agricultural production in Washington State is based on minor crops; and

"Whereas, Washington State is one of the most diverse agricultural states in the nation, growing a large number of relatively small but specialized crops of great significance to the American consumer; and

"Whereas, the continued production of these crops and their availability to consumers is dependent on the ability to safely and effectively control insects, weeds, diseases, and other pests; and

"Whereas, an essential tool in the control of pests in either a conventional or an integrated pest management strategy is the availability of pesticides; and

"Whereas, without the availability of a full array of safe and adequate pest management tools, there is likely to be a number of negative consequences including: Decrease in the

exports of food products to other countries; increase in imports of less wholesome food products; farming communities will have less diversified economies and will be subject to more economic volatility; decrease of yield; increase in price; decrease in food supply and variety; decrease in ability to meet state and national produce quality standards; increase in incidents of food safety hazards; and an increase in use of products that have greater impact on human health due to higher toxicity than the products that were previously in use; and

"Whereas, the production of food in several states is similarly affected due to the lack of availability of pest control products for the production of minor crops;

"Now, therefore, your Memorialists respectfully pray that the appropriate committees of the United States Congress inquire into the effects of the 1988 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act on the availability of pesticides for the protection of minor crops and that legislation be introduced and voted upon that has considered the following provisions:

"(1) Extend the registrants' exclusive data rights by ten years, thereby increasing the time period over which pesticide registrants have to recoup the cost of registration;

"(2) Establish specific time periods for the Environmental Protection Agency to act on minor crop registrations as an incentive to registrants to pursue additional registrations for minor uses;

"(3) Provide for an extension in the time for registrants to submit data equal to the time it takes for the Environmental Protection Agency to act upon a request for a waiver, so that registrants are not inadvertently forced to develop data during the time the Environmental Protection Agency is deliberating on the waiver request;

"(4) Provide additional time for registrants to generate the necessary residue data for reregistration of pesticides for minor crop uses, or if the registrant is unwilling to finance the generation of the data, to give time to find other methods to generate the required data; and

"(5) Provide a temporary extension of registration for unsupported minor uses so that, if the current registrant declines to request the reregistration, other organizations have the time to comply with registration requirements before cancellation of the registration.

"*Be it resolved*, That copies of this Memorial be immediately transmitted to the Honorable Bill Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, each member of Congress from the State of Washington, the Secretary of the United States Department of Agriculture, the Administrator of the United States Environmental Protection Agency, and the National Association of State Departments of Agriculture."

POM-94. A resolution adopted by the General Assembly of the State of New Jersey; to the Committee on Appropriations.

"ASSEMBLY RESOLUTION NO. 124

"Whereas, the President of the United States' Fiscal Year 1996 budget proposal includes a significant reduction in funding for ongoing shore protection, beach restoration and flood control projects in New Jersey; and

"Whereas, the completion of these projects is essential to preserving a State and national resource, and can be accomplished only with the assistance of the federal government; and

"Whereas, new Jersey, in establishing a $15.0 million annual Shore Protection Fund, has clearly committed State funding to assist in the replenishment and preservation of beaches along the New Jersey shore; and

"Whereas, tourism is the State's second largest industry, and the annual $10.0 billion in tourism spending in the coastal area constitutes approximately one-half of the total tourism spending in the State; and

"Whereas, the proposed budget reduction, if realized, would have a disastrous effect on the shore tourism economy, including the potential loss of hundreds of thousands of jobs directly and indirectly related to the tourism industry, on property values and on State and local tax revenues; Now, therefore, be it

"*Resolved by the Assembly of the State of New Jersey:*

"1. The President and the Congress of the United States are respectfully urged to restore funding in the Fiscal Year 1996 federal budget for beach stabilization and flood control projects along the Jersey Shore.

"2. Copies of this resolution, signed by the Speaker of the Assembly and attested by the Clerk thereof, shall be transmitted to the President and Vice President of the United States, the Majority Leader of the United States Senate, the Speaker of the House of Representatives, the Commander and Chief of Engineers of the United States Army Corps of Engineers, every member of Congress elected from the State, the Governor of the State, and the Commissioner of Environmental Protection."

POM-95. A resolution adopted by the Council of the City of Fairview Park, Ohio relative to telecommunications; to the Committee on Commerce, Science, and Transportation.

POM-96. A resolution adopted by the City of Brook Park, Ohio relative to telecommunications; to the Committee on Commerce, Science, and Transportation.

POM-97. A resolution adopted by the Council of the City of Barberton, Ohio relative to cable television; to the Committee on Commerce, Science, and Transportation.

POM-98. A concurrent resolution adopted by the Legislature of the State of Arizona; to the Committee on Commerce, Science, and Transportation.

"SENATE CONCURRENT MEMORIAL 1003

"Whereas, the globalization of the United States economy has resulted in the expansion of international trade and tourism; and

"Whereas, the international trade and tourism are dependent on an efficient transportation system, including the availability of direct international flights with multiple destinations; and

"Whereas, the travel and tourism industry is one of the largest industries in the United States; and

"Whereas, international trade is key to the economic health of this nation and contributes directly and indirectly to more than sixty per cent of new jobs created in the United States in recent years; and

"Whereas, international air service is an important component of international trade and the travel and tourism industry; and

"Whereas, international air service is becoming increasingly important to the economic well-being of states and cities; and

"Whereas, increased international air service results in local job development, an enlarged tax base, access to new markets for local products, increased foreign investment, enhanced cultural exchange and increased visibility on the world stage; and

"Whereas, international air service is regulated by treaties negotiated between sovereign nations of the world; and

"Whereas, with the passage of the North American Free Trade Agreement the flow of goods and people will greatly increase among this country, Canada and Mexico, as well as the rest of the world; and

"Whereas, individual states have fought hard and committed resources to securing and bolstering international trade and tourism between themselves and other nations thereby increasing their own exports by over seventy per cent in recent years; and

"Whereas, federal regulations governing the negotiations of international flight routes impinge on the power of states to enter into their own agreements, impede state attempts to compete in the international market place and hamper the economic development efforts of individual states; and

"Whereas, the positions and views of individual communities should play an increasing role in decisions by the United States government with respect to international air service negotiations; and

"Whereas, more liberal international air route regimes between the United States and its trading partners are necessary; and

"Whereas, the easing of certain federal processes would hasten new international air service and the benefits associated with such air service. Wherefore your memorialist, the Senate of the State of Arizona, the House of Representatives concurring, prays:

"1. That the Congress of the United States enact legislation to reduce federal regulations restricting the ability of states to participate in the negotiation of international flight routes.

"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, the Speaker of the United States House of Representatives and to each Member of the Arizona Congressional Delegation."

POM-99. A joint resolution adopted by the Legislature of the State of Idaho; to the Committee on Commerce, Science, and Transportation.

"SENATE JOINT MEMORIAL NO. 103

"Whereas, Amtrak provides mobility to citizens of many smaller communities poorly served by air and bus services, as well as to those senior citizens, disabled people, students and persons with medical conditions preventing them from flying who need trains as a travel option; and

"Whereas, Amtrak is nine times safer than driving on a passenger-mile basis, and operates even in severe weather conditions; and

"Whereas, Amtrak travel rose forty-eight percent from 1982 to 1993 and Amtrak dramatically improved coverage of its operating costs from revenue; and

"Whereas, expansion of Amtrak service by using existing rail rights-of-way would cost less and use less land than new highways and airports, and would further increase Amtrak's energy-efficiency advantage; and

"Whereas, federal investment in Amtrak has fallen in the last decade while it has risen for airports and highways; and

"Whereas, states may use highway trust fund money as an eighty percent federal match for a variety of nonhighway programs, but they are prohibited from using such moneys for Amtrak projects; and

"Whereas, Amtrak pays a fuel tax that airlines do not pay; and

"Whereas, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak;

Now, therefore, be it resolved by the members of the First Regular Session of the Fifty-third Idaho Legislature, the Senate and the House of Representatives concurring therein, That we urge the Congress of the United States to take the following steps to insure the continued operation of the Amtrak transportation system: That federal funding of Amtrak not be reduced, that Amtrak be excused from paying fuel taxes that airlines do not pay, that states be given the flexibility to use federal highway trust fund moneys on Amtrak projects if they so choose, that federal officials include a strong Amtrak system in any plans for a National Transportation System.

"*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, and 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-100. A resolution adopted by the Assembly of the State of New York; to the Committee on Commerce, Science, and Transportation.

"LEGISLATIVE RESOLUTION ASSEMBLY NO. 374

"Whereas, Amtrak is energy-efficient and environmentally beneficial, consuming about half as much energy per passenger mile as airlines and causing less air pollution; and

"Whereas, Amtrak provides mobility to citizens of many smaller communities, poorly served by air and bus services, as well as to those senior citizens, disabled people, students and persons with medical conditions, who are prevented from flying and who depend on trains as a travel option; and

"Whereas, Amtrak is nine times safer than driving, on a passenger-mile basis, and operates even in severe weather conditions; and

"Whereas, Amtrak travel rose 48 percent, from 1982 to 1993, and Amtrak dramatically improved coverage of its operating costs from revenues; and

"Whereas, Amtrak provided service to 7,422,288 riders in New York State in fiscal year 1994; and

"Whereas, Expansion of Amtrak service through the use of existing rail rights-of-way would cost less and use less land than new highways and airports, and would further increase Amtrak's energy-efficiency advantage; and

"Whereas, The State of New York has made significant investments to ensure the continuation of certain Amtrak services, as well as for capital improvements to rail infrastructure; and

"Whereas, Federal investment in Amtrak has fallen in the last decade, while it has risen for airports and highways; and

"Whereas, States may use highway trust fund money as an 80 percent Federal match for a variety of non-highway programs, while Amtrak is prohibited from using moneys for such projects; and

"Whereas, Amtrak workers and vendors pay more in taxes than the federal government invests in Amtrak; and

"Whereas, Amtrak adds to the New York State economy by expending more than $23 million for goods and services (in fiscal year 1993), employing over 3,250 New York State residents whose annualized earnings total approximately $95 million; Now, therefore, be it

"*Resolved,* That this Legislative Body pause in its deliberations to memorialize Congress and the President of the United States to take the following steps to insure adequate funding and regulatory support of Amtrak: maintain current funding levels for Amtrak; provide Amtrak the same exemption on fuel taxes as that provided to the airline industry; provide states with the flexibility of utilizing federal highway trust funds for Amtrak projects; and provide federal officials with the appropriate authority and regulatory support necessary to make Amtrak a strong component of a National Transportation System; and be it further

"*Resolved,* That copies of this Resolution, suitably engrossed, be transmitted to President William J. Clinton, the President of the Senate of the United States, the Speaker of the House of Representatives, the members of the New York State Congressional Delegation, and the Save Amtrak Coalition."

POM-101. a resolution adopted by the Senate of the Legislature of the Commonwealth of Puerto Rico; to the Committee on Commerce, Science, and Transportation.

"S.R. 1491

"The government of Puerto Rico has stated that among its priorities is the need to effectively attend to the problems of antisocial conduct which threatens our quality of life and harmonious existence. To achieve this, it is essential to incorporate prevention strategies which avoid the promotion of aggressiveness and violence in the citizenry, especially in our children and youths. The government's action and private initiative must direct their best efforts to programs directed to strengthen the family and to propitiate a wholesome upbringing of Puerto Rican children and youths.

"The scientific community has indicated that there is a relationship between exposure to violence on television and aggressive behavior. Televised violence conditions the mind and physical skills of children and adolescents. It also teaches and develops antisocial values and attitudes. In Puerto Rico, studies conducted by distinguished professionals have established the negative effect on human behavior produced by the messages of violence transmitted in the communication media. It has been stated that the mass communication media could be considered as the main vehicles of social conditioning. From said studies, it has also been revealed that in Puerto Rico almost all the population has access to television, and that during infancy, the exposure to this medium is greater than exposure to schooling.

"Within this context, the Senate of Puerto Rico deems it essential to adopt measures which contribute to make television programming more wholesome and to improve the quality and content of the messages received by television viewers. Government action and private initiatives should be directed to prevent our children and youth from being exposed to violent situations and harmful activities that lead to delinquent and antisocial conduct at home, school and the community.

"With the objective of promoting affirmative action on the effects of television programs with a high content of violence, and showing of adult situations, this Body is, at present, considering Senate Bill No. 507. This measure has the purpose of creating an Advisory Board attached to the Department of Consumer's Affairs, with the function of designing a television program classification system to serve as a guide for commercial stations. It would be adopted voluntarily and through self-regulation, fixing the parameters of scheduling and content.

"However, when analyzing the possible options of the Legislature of Puerto Rico to determine the feasibility of adopting regulations on the content of the programming, we find that within our juridical frame, television constitutes an activity which affects interstate commerce. The Congress of the United States has directed that the Federal Communications Commission is the agency responsible for regulating the same. That is, the Federal Government has primary jurisdiction over this matter. The courts have interpreted that in matters of regulating interstate communications, the field is preempted by the Federal Communications Act. It is understood that the Congress has preempted the field completely, in radio as well as television communication.

"With each passing day, American citizens are more aware of the damage that arises from the continuous and repetitive violence transmitted through the communications media. With the conviction that the voluntary initiatives of the media have not been sufficient to fight the problem of televised violence, Senator Kent Conrad filed S. 332 before the United States Senate, which provides resources to limit the exposure of children to television programs with a high content of violence.

"The measure proposes to adopt what is known as the 'Childrens' Media Protection Act'. In essence, the bill requires all manufacturers to install on every new television set, a device which allows the blocking of those programs that are not fit for minors. With this resource at hand, parents can make a decision as to the type of program their children will be exposed to.

"The legislation also contains provisions regarding the classification of programs of violent content. The Federal Communications Commission, upon consulting with broadcasters of television stations and cable retransmitters, private groups and interested citizens, is required to promulgate rules to classify the levels of violence in television programming.

"The measure provides additional safeguards which require the Federal Communications Commission to adopt rules to prohibit commercial television, the Cable TV industry and the public telecommunications entities from transmitting programs and commercials which contain unnecessary violence, from 6:00 a.m. to 10:00 p.m.

"The Senate of Puerto Rico recognizes that the approval of S. 332 shall have a positive effect on the programming that is broadcast locally by commercial channels and Cable TV. To such ends, we support the efforts of the United States Senate directed to reducing televised violence and improving the quality of the programming, for the benefit of our children and youths. Therefore, through this Resolution, the Senate of Puerto Rico respectfully exhorts the Senate of the United States to proceed with, and approve the 'Childrens' Media Protection Act' contained in S. 332.

"Be it resolved by the Senate of Puerto Rico:

"Section 1.—To express the United States Senate the support of the Senate of Puerto Rico to the approval of S. 332, filed in that Body by Senator Kent Conrad, for the purpose of establishing the 'Childrens' Media Protection Act', providing the mechanisms to limit the exposure of children to television programs with a high content of violence.

"Section 2.—The Secretary of the Senate of Puerto Rico is hereby directed to remit a copy of this Resolution, in both of our official languages, to the Senate of the United States, to the Majority and Minority Floor

Leaders of the Senate of the United States, to the Chairperson and members of the Committee on Commerce, Science and Transportation that has for its consideration S. 332, to Senator Kent Conrad, author of said legislative initiative, and to the Resident Commissioner, Carlos Romero Barceló.

"Section 3.—This Resolution shall take effect immediately after its approval."

POM-102. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

"HOUSE JOINT MEMORIAL 4008

"Whereas, harbor seal and sea lion populations have greatly expanded in recent years due to the almost absolute protection afforded them under the federal Marine Mammal Protection Act; and

"Whereas, seals and sea lions are active predators upon anadromous fish such as salmon and steelhead trout; and

"Whereas, anadromous fish populations are significantly reduced in numbers throughout Washington state, and some stocks have been listed as threatened or endangered species; and

"Whereas, many more anadromous fish stocks are likely to be listed as threatened or endangered; and

"Whereas, in order to allow certain salmon and steelhead populations to recover to and be sustained at viable levels, it will be necessary to have more flexibility to manage seals and sea lions in identifiable areas where they cause unacceptable mortality levels in specific fish runs; and

"Whereas, while recent amendments to the federal Marine Mammal Protection Act to allow for lethal removal of problem seals or sea lions, the process established to do so is cumbersome and time-consuming and will do little to protect the fish; and

"Whereas, seal and sea lion predation of anadromous fish is a problem that has been going on for some time and needs to be addressed with some urgency;

"Now, therefore, Your Memorialists respectfully pray that the Marine Mammal Protection Act be modified to allow for a more common-sense approach to managing predacious seals and sea lions, including provision for reasonable, balanced, and prudent population levels of seals and sea lions in Washington state and provision for the active management of abundant populations at set levels determined with modern wildlife management science by federal and state management agencies, including use of a less cumbersome lethal removal option when and where necessary. In asking for these amendments, it is not our intention to decimate or eliminate seals and sea lions but to find balance between protection of marine mammals and protection of anadromous fish.

"*Be it resolved*, That copies of this Memorial be immediately transmitted to the Honorable Bill Clinton, President of the United States, the President of the United States Senate, the Speaker of the House of Representatives, and each member of Congress from the State of Washington."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PACKWOOD, from the Committee on Finance:

Jeffrey M. Lang, of Maryland, to be Deputy U.S. Trade Representative, with the rank of Ambassador, vice Rufus Hawkins Yerxa, resigned.

(The above nomination was reported with the recommendation that he be confirmed, subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. CHAFEE (for himself and Mr. PELL):

S. 786. A bill to designate the United States Post Office building located at 24 Corliss Street, Providence, Rhode Island, as the "Harry Kizirian Post Office Building", and for other purposes; to the Committee on Governmental Affairs.

By Mr. BURNS:

S. 787. A bill to provide an exemption from certain hazardous material transporation regulations for small cargo tank vehicles with a capacity of not more than 3,500 gallons that transport petroleum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 788. A bill to delay the effective date of trucking deregulation under the Federal Aviation Administration Authorization Act of 1994; to the Committee on Commerce, Science, and Transportation.

By Mr. CHAFEE (for himself, Mr. MOYNIHAN, and Mr. KYL):

S. 789. A bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly-traded stock to certain private foundations, and for other purposes; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CHAFEE (for himself and Mr. PELL):

S. 786. A bill to designate the United States Post Office building located at 24 Corliss Street, Providence, Rhode Island, as the "Harry Kizirian Post Office Building," and for other purposes; to the Committee on Governmental Affairs.

THE HARRY KIZIRIAN POST OFFICE BUILDING ACT OF 1995

Mr. CHAFEE. Mr. President, I send to the desk a bill for Senator PELL and myself. This deals with the designation of the U.S. Post Office building located on 24 Corliss Street in Providence. Under the new designation it becomes the "Harry Kizirian Post Office Building."

Mr. President, today Senator PELL and I are introducing legislation to name the post office at 24 Corliss Street in Providence, RI after a renowned Rhode Islander and a proud American—Harry Kizirian. Representatives JACK REED and PATRICK KENNEDY are introducing identical legislation in the House of Representatives. The Rhode Island congressional delegation is united in its desire to honor Harry Kizirian for his years of service to our State.

Mr. President, just a word about Harry Kizirian. He is a celebrated citizen in our State. For many, many years he has been postmaster of our principal post office. He is a community leader.

Harry Kizirian is a household name in Rhode Island because of his lifelong career in the Postal Service but, even more so, because of his involvement with and commitment to his community. He has served on the board of directors of Butler Hospital, Big Brothers of Rhode Island, the Providence Human Relations Commission, Rhode Island Blue Cross, and the Rhode Island Heart and Lung Associations. Over the years he has earned countless awards and citations for his community involvement. He was inducted into the Rhode Island Hall of Fame and received the Roger Williams Award. He served on advisory boards for Rhode Island College, Providence Heritage Commission on R.I. Medal of Honor Recipients, the Disabled American Veterans, and the Marine Corps League. Harry Kizirian is a husband, a father, a grandfather, a Postmaster to Rhode Island, and a decorated World War II hero.

The lessons learned from Harry Kizirian are lessons of fortitude, valor, strength of character, and perseverance.

While Harry was just a boy in school, at Mt. Pleasant High School in Providence, he went to work part-time as a postal clerk. He was 15 years old and his father had died, so Harry took responsibility for supporting his family. He did so while keeping his grades up and participating in athletics. Twenty years later, at 35, Harry was named Postmaster of Rhode Island, a position he held for more than 25 years.

Like many young men at the time, Harry's job was interrupted by World War II. The day after high school graduation Harry enlisted in the Marine Corps.

After going through training, he ended up with the marines that were invading Okinawa.

He fought on Okinawa with the 6th Marine Division. He was awarded the Navy Cross—the second highest honor a Marine can receive—for his valor on Okinawa. What did he do for it?

Harry and a group of marines were pinned down by a Japanese machine gunner. Harry got up and ran toward the machinegun. He was shot in the legs. Despite his injuries, he pulled himself forward and eliminated the enemy position. This extraordinary act of valor sent Harry Kizirian, a teenage boy, to a hospital in Guam with the Navy Cross, a Bronze Star, and a Purple Heart with a Gold Star.

Harry Kizirian was seen by millions of Americans as the face of the war in

the Pacific. Before he was injured, a news photographer captured his image, the image of a boy in battle—by that time he was the age of 19—for the cover of the New York Times Sunday Magazine. Last November, I was present when Harry was honored by his old Atwood-Bucci Detachment of the Marine Corps. The famous photograph was prominently displayed on the podium. It has been 50 years since that picture was snapped and many have glorified the war, but not Harry. Harry's message to young people, and to all of us, is that "war is awful. There's no way to describe it. Nobody wins a war."

After the war, Harry returned to Providence and to his job at the post office. He was a substitute clerk. By 1954 he was made foreman. He was named assistant superintendent during the transition from the old postal system to the turnkey mechanization system. The Providence post office on Corliss Street was the first post office in the country to use the turnkey system. The turnkey system was the first fully automated system for sorting the mail. Until that point, all of the mail was sorted by hand. The new system was not easily implemented, but once again Harry persevered. In 1961, Harry was rewarded for his hard work and dedication. He was named Postmaster of Rhode Island.

What better way to honor the life and lessons of Harry Kizirian than to name the post office on Corliss Street for him. I am pleased to introduce this bill today with Senator PELL and hope that it will receive speedy consideration by the Subcommittee on Post Office and Civil Service of the Governmental Affairs Committee.

So it seems very fitting, Mr. President, that this post office in our capital city should be named after Harry Kizirian.

Mr. PELL. Mr. President, I join with my friend and colleague, Senator CHAFEE of Rhode Island, in introducing legislation to designate the U.S. Post Office building at 24 Corliss Street, Providence, as the Harry Kizirian Post Office Building.

I am enthusiastic about this designation. I can think of no more fitting tribute. Harry Kizirian has made extraordinary contributions to the United States, to Rhode Island, and to Providence.

A very brief review of his contributions is instructive. Harry enlisted in the U.S. Marine Corps after graduating from Mt. Pleasant High School. He subsequently became Rhode Island's most decorated marine.

He fought in Okinawa and was shot in battle. He earned the Navy Cross, the Bronze Star with a "V", the Purple Heart with a Gold Star and, finally, the Rhode Island Cross.

Upon his return to Rhode Island, he went to work at the post office, where he had worked as a 15-year-old to support his widowed mother. He worked his way up through leadership positions in the Postal Service.

He was confirmed by the U.S. Senate as Postmaster in 1961, a position he held for 25 years. In addition to his military service and his work in the Postal Service, he has served on numerous committees and boards in Rhode Island.

Harry served on the board of directors of Butler Hospital, Big Brothers of Rhode Island, the Providence Human Relations Commission, Rhode Island Blue Cross and Rhode Island Heart and Lung Associations.

He also was a member of the Community Advisory Board of Rhode Island College, the Providence Heritage Commission, the Commission on Rhode Island Medal Honor Recipients, DAV, and the Marine Corps League.

Harry Kizirian already is a Rhode Island landmark. His name has become synonymous with the qualities he exemplifies—dedication, loyalty, leadership, and hard work.

The Harry Kizirian Post Office Building will be an entirely appropriate testament to his remarkable life and friendships.

By Mr. BURNS:

S. 787. A bill to provide an exemption from certain hazardous material transportation regulations for small cargo tank vehicles with a capacity of not more than 3,500 gallons that transport petroleum, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE HAZARDOUS MATERIALS REGULATORY RELIEF ACT OF 1995

• Mr. BURNS. Madam President, today I am introducing legislation to reduce yet another regulatory burden on many petroleum marketers and other small businesses across the country. My bill would prohibit the Department of Transportation's Research and Special Programs Administration [RSPA] from enforcing an unwarranted and unnecessary regulation on operators and owners of small cargo tanks of 3,500 gallons or less and return that authority back to the States where it belongs. Specifically, my bill would repeal a regulation promulgated by RSPA which requires cargo tank operators and owners to comply with cumbersome Federal testing inspections and retrofitting mandates.

Members of the Montana-Western Petroleum Marketers Association and the Petroleum Marketers Association of America have been especially negatively impacted with RSPA's requirements. The cost of the regulation to small businesses often costs thousands of dollars, with little additional safety protection. In addition, the Federal inspection requirements often force cargo tank operators to travel great distances to comply with the regulations. It is time that we force regulators to be responsible and establish justification before the implementation of such regulations. I think we could send a clear message by passing my proposed legislation.

Many of the cargo tank owners and operators are owned by small "mom and pop" businesses, who operate on a slim profit margin. The cost of compliance can be devastating to their business. For years, States had the authority to inspect small cargo tank vehicles. Not only was this more convenient for owners and operators, but States had the ability to structure the program to benefit their constituents. I think we should return this authority to the States and allow them to make decisions which best suit their needs.

Up until 1991, RSPA provided an exemption of cargo tanks carrying 3,500 gallons of petroleum product or less. However, since that time, RSPA has decided that no tank is too small to regulate and that all cargo tank operators should operate under the same rules. In theory this may sound reasonable, but, in reality, small cargo tanks are very different from larger tanks and should be treated as such. I ask for your support of my legislation and introduce it today to restore some common sense into the Federal bureaucracy.•

By Mr. CHAFEE (for himself, Mr. MOYNIHAN, and Mr. KYL):

S. 789. A bill to amend the Internal Revenue Code of 1986 to make permanent the section 170(e)(5) rules pertaining to gifts of publicly traded stock to certain private foundations, and for other purposes; to the Committee on Finance.

GIFTS LEGISLATION

Mr. CHAFEE. Mr. President, today I am introducing legislation on behalf of myself, Senator MOYNIHAN, and Senator KYL, which would permit the full value deduction for gifts of appreciated stock to private foundations.

Since 1984, donors have been allowed to deduct the full fair market value of certain gifts and publicly traded stock given to private foundations. In other words, if an individual has a private foundation that he has set up, and he has some stock—in General Electric, for example, that has appreciated substantially—when he makes a gift of that stock to the foundation, and General Electric, say, is trading at 58, that the full value of that stock, namely each share at the present value of 58, is a deductible contribution by the donor.

Clearly, if an individual made such a contribution to Yale University or to the United Way, whatever it was, the full value of the stock would be a deductible contribution.

And the question here is, what about now, the contribution of that stock to a private foundation? Up until January 31, 1994—in other words last January—December 31—it has been possible to

get a full deduction for the contribution of stock to a private foundation.

Unfortunately, on that date, the action which provided for the full deductibility terminated. It sunsetted.

Mr. President, I would like to stress that private foundations are nonprofit organizations. They support charitable activity. They have to do that or they are not allowed an exemption. They provide support for making grants to other nonprofit agencies.

In other words, sometimes a private foundation has the capacity to make a charitable contribution itself to the United Way or Nature Conservancy or the Sierra Club or whatever it might be. They provide support for such things as scholarships and disaster relief. Also, they make grants to individuals.

Now, foundations are created by endowments, money given by individuals or by families or by corporations. They make grants and operate programs with the income earned from investing the endowments. Since most foundations have permanent endowments, they do not have to raise funds each year from the public in order to continue their work.

Most functions, charitable activities every year have to go out and raise money so they are reluctant to get into long-term commitments, but foundations such as the Ford Foundation with a substantial amount of money that they know is there—realizing the income is going to be there next year, they are not dependent upon annual donations—act as the research and development arm of our society.

In a 1965 Report on Private Foundations, the Treasury Department recognized the special nature of foundations by describing them as "uniquely qualified to initiate thought and action, experiment with new and untried ventures, dissent from prevailing attitudes, and act quickly and flexibly." Indeed, foundations reflect the innovative spirit of the individuals and corporations that endow them.

There are more than 30,000 private foundations in America today that provide over $10 billion annually to support innumerable projects, large and small. Among other things, they help the poor and disadvantaged, advance scientific and medical research, and strengthen the American educational system.

Let me give you a few examples of some of the medical advances that have occurred as a result of the financial assistance provided by private foundations:

The polio vaccine developed by Dr. Jonas Salk in 1953 after the Sarah Scaife Foundation provided him with the money he needed to establish and equip his virus laboratory.

With the help of the Commonwealth Fund, Dr. Papanicolaou discovered in 1923 that cervical cancer could be diagnosed before a woman presented any symptoms. That breakthrough led to the basic and now routine diagnostic technique known as the Pap smear.

In 1951 Dr. Max Theiler received the Nobel prize in medicine for his work in developing the yellow fever vaccine. That effort was the direct result of a 30-year, all-out commitment by the Rockefeller Foundation to eradicate this disease.

But, Mr. President, private foundations have been involved in many more aspects of our daily lives than simply funding medical advances. Dr. John V.N. Dorr was an engineer in the early 1950's. He speculated that many accidents occurring on our Nation's highways during inclement weather were the result of drivers hugging the white lines painted in the middle of the road. Dorr believed that if similar lines were painted on the shoulder side of the road, lives could be saved.

Dorr convinced transportation engineers in Westchester County, NY, to test his theory along a particularly treacherous stretch of highway. The dropoff in accidents along this part of the road was dramatic, and Dr. Dorr used his own foundation to publicize the demonstration's results nationally. Today, although State funds are now used to paint white lines on the shoulder side of the Nation's highways, every person traveling in a motor vehicle is indebted to Dorr and his foundation for implementing this life-saving discovery.

As these examples indicate, private foundations provide a great many benefits to our society. By permanently extending this tax incentive, we can continue to encourage individuals to dedicate a substantial portion of their wealth to public, rather than private purposes. I hope my colleagues will support this legislation.

• Mr. MOYNIHAN. Mr. President, I am pleased to join my distinguished colleague, Senator CHAFEE, in introducing a bill to restore a full, fair-market-value deduction for gifts of publicly traded stock to private foundations. This was in fact the law through 1994, but the provision in the Tax Code providing for a charitable deduction measured by the fair market value of stock donated to a private foundation expired on December 31, 1994.

As many in this body will recall, I worked for many years to restore a full, fair-market-value deduction for gifts of appreciated property to public charities. That deduction had been limited in 1986 tax legislation for taxpayers subject to the alternative minimum tax, so that they could only deduct the "basis"—usually, the original purchase price—of property donated to public charities, such as colleges and universities, museums and other charitable institutions that receive the larger share of their support from the public at large. Happily, the full, fair-market-value deduction for all such gifts—personal property, real estate, and intangible property such as stock—was restored on a permanent basis in the 1993 budget legislation, the Omnibus Budget Reconciliation Act of 1993.

The bill we introduce today concerns charitable gifts to private foundations, which unlike public charities, receive their support from, and are often controlled by, a limited group of individuals. A full, fair-market-value deduction for gifts of publicly traded stock had been available in the case of private foundations over the past 10 years under a special rule enacted in 1984 and scheduled to expire on December 31, 1994. This automatic expiration was intended to provide Congress an opportunity to review the private foundation contribution rule with the benefit of several years of practical experience under it. I believe that most commentators have concluded that the private foundation rules are working relatively well, and that the rule providing for fair-market-value deductions for gifts of publicly traded stock has not been a source of compliance problems. As a result, there is no reason to provide different treatment for gifts of publicly traded stock to private foundations that is currently provided for such gifts to public charities. The bill we introduce today would conform the rules for both.

Mr. President, private foundations are an important aspect of America's nonprofit, independent sector. The contributions made by nonprofit institutions to our society in the areas of education, health, disaster relief, the advancement of knowledge and the preservation of our history and cultural artifacts is vast. I daresay it is often not fully understood or appreciated, particularly the extent to which nonprofit institutions perform functions that are typically governmental undertakings in other societies. Nonprofit institutions are a part of our culture that we should take care not to lose, and government has a role in insuring that they thrive. The legislation we introduce today is a part of that role.•

ADDITIONAL COSPONSORS

S. 324

At the request of Mr. WARNER, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 324, a bill to amend the Fair Labor Standards Act of 1938 to exclude from the definition of employee firefighters and rescue squad workers who perform volunteer services and to prevent employers from requiring employees who are firefighters or rescue squad workers to perform volunteer services, and to allow an employer not to pay overtime compensation to a firefighter or rescue squad worker who performs volunteer services for the employer, and for other purposes.

S. 334

At the request of Mr. MCCONNELL, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 334, a bill to amend title I of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage States to enact a law enforcement officers' bill of rights, to provide standards and protection for the conduct of internal police investigations, and for other purposes.

S. 490

At the request of Mr. GRASSLEY, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 490, a bill to amend the Clean Air Act to exempt agriculture-related facilities from certain permitting requirements, and for other purposes.

S. 524

At the request of Mr. WELLSTONE, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 524, a bill to prohibit insurers from denying health insurance coverage, benefits, or varying premiums based on the status of an individual as a victim of domestic violence, and for other purposes.

S. 530

At the request of Mr. GREGG, the name of the Senator from Arizona [Mr. KYL] was added as a cosponsor of S. 530, a bill to amend the Fair Labor Standards Act of 1938 to permit State and local government workers to perform volunteer services for their employer without requiring the employer to pay overtime compensation, and for other purposes.

S. 768

At the request of Mr. GORTON, the names of the Senator from Virginia [Mr. WARNER], the Senator from Mississippi [Mr. LOTT], the Senator from Mississippi [Mr. COCHRAN], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 768, a bill to amend the Endangered Species Act of 1973 to reauthorize the act, and for other purposes.

S. 770

At the request of Mr. GRAMM, his name was added as a cosponsor of S. 770, a bill to provide for the relocation of the United States Embassy in Israel to Jerusalem, and for other purposes.

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. HARKIN, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. DEWINE, his name was added as a cosponsor of S. 770, supra.

At the request of Mr. DOLE, the names of the Senator from Alabama [Mr. SHELBY], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Mississippi [Mr. LOTT], the Senator from Utah [Mr. HATCH], the Senator from Indiana [Mr. COATS], the Senator from Montana [Mr. BAUCUS], and the Senator from Wyoming [Mr. THOMAS] were added as cosponsors of S. 770, supra.

S. 772

At the request of Mr. DORGAN, the names of the Senator from Nebraska [Mr. EXON] and the Senator from Hawaii [Mr. INOUYE] were added as cosponsors of S. 772, a bill to provide for an assessment of the violence broadcast on television, and for other purposes.

S. 607

At the request of Mr. WARNER, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 753

At the request of Mr. BAUCUS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 753, a bill to allow the collection and payment of funds following the completion of cooperative work involving the protection, management, and improvement of the National Forest System, and for other purposes.

AMENDMENTS SUBMITTED

THE INTERSTATE TRANSPORTATION OF MUNICIPAL SOLID WASTE ACT OF 1995

WELLSTONE AMENDMENT NO. 750

Mr. WELLSTONE proposed an amendment to the bill (S. 534) to amend the Solid Waste Disposal Act to provide authority for States to limit the interstate transportation of municipal solid waste, and for other purposes; as follows:

On page 56, line 10, strike "is imposed" and insert "had been exercised prior to May 15, 1994, and was being implemented on May 15, 1994,"

On page 56, line 12, insert ";" after "subdivision" and strike "in effect on May 15, 1994"

On page 60, lines 4–5, strike "was in effect prior to" and insert "such authority was imposed prior to May 15, 1994 and was being implemented on"

KEMPTHORNE AMENDMENT NO. 751

Mr. SMITH (for Mr. KEMPTHORNE) proposed an amendment to the bill S. 534, supra; as follows:

On page 69, line 13, strike the word, "remote".

On page 69, line 19, after the word, "infeasible", insert the word, "or".

On page 69, lines 21 and 22, strike the words, "the unit shall be exempt from those requirements" and in lieu thereof insert the words, "the State may exempt the unit from some or all of those requirements".

On page 69, line 22, add the following new sentence: "This subsection shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.".

GRAHAM AMENDMENTS NOS. 752–753

Mr. GRAHAM proposed two amendments to the bill S. 534, supra; as follows:

AMENDMENT NO. 752

On page 63, strike line 4 and all that follows through page 64, line 2, and insert the following:

"(e) STATE-MANDATED DISPOSAL SERVICES.—A political subdivision of a State may exercise flow control authority for municipal solid waste and for recyclable material voluntarily relinquished by the owner or generator of the material that is generated within its jurisdiction if, prior to May 15, 1994, the political subdivision—

"(1) was responsible under State law for providing for the operation of solid waste facilities to serve the disposal needs of all incorporated and unincorporated areas of the country;

"(2) is required to initiate a recyclable materials recycling program in order to meet a municipal solid waste reduction goal of at least 30 percent;

"(3) has been authorized by State statute to exercise flow control authority and had implemented the authority through the adoption or execution of a law, ordinance, regulation, contract, or other legally binding provision; and

"(4) had incurred, or caused a public service authority to incur, significant financial expenditures to comply with State law and to repay outstanding bonds that were issued specifically for the construction of solid waste management facilities to which the political subdivision's waste is to be delivered.

"(5) the authority under this subsection shall be exercised in accordance with Section 401z(b)(4)".

AMENDMENT NO. 753

On page 65, line 10, strike "or (d)" and insert "(d), or (e)".

On page 65, line 3, strike "or (d)" and insert "(d), or (e)".

SPECTER (AND OTHERS) AMENDMENT NO. 754

Mr. SPECTER (for himself, Mr. CRAIG, Mr. GRASSLEY, Mr. KEMPTHORNE, and Mr. BROWN) proposed an amendment to the bill, S. 534, supra; as follows:

At the appropriate place, insert the following new section:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) There has been enormous public concern, worry and fear in the U.S. over international terrorism for many years;

(2) There has been enormous public concern, worry and fear in the U.S. over the threat of domestic terrorism after the bombing of the New York World Trade Center on February 26, 1993;

(3) There is even more public concern, worry and fear since the bombing of the Alfred P. Murrah Federal Building in Oklahoma City on April 19, 1995;

(4) Public concern, worry and fear has been aggravated by the fact that it appears that the terrorist bombing at the Federal building in Oklahoma City was perpetrated by Americans;

(5) The United States Senate should take all action within its power to understand and respond in all possible ways to threats of domestic as well as international terrorism;

(6) Serious questions of public concern have been raised about the actions of federal law enforcement officials including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms relating to the arrest of Mr. Randy Weaver and others in Ruby Ridge, Idaho, in August, 1992 and Mr. David Koresh and others associated with the Branch Davidian sect in Waco, Texas, between February 28, 1993, and April 19, 1993;

(7) Inquiries by the Executive Branch have left serious unanswered questions on these incidents;

(8) The United States Senate has not conducted any hearings on these incidents;

(9) There is public concern about allowing federal agencies to investigate allegations of impropriety within their own ranks without congressional oversight to assure accountability at the highest levels of government;

(10) Notwithstanding an official censure of FBI Agent Larry Potts on January 6, 1994, relating to his participation in the Idaho incident, the Attorney General of the United States on May 2, 1995, appointed Agent Potts to be Deputy Director of the FBI;

(11) It is universally acknowledged that there can be no possible justification for the Oklahoma City bombing regardless of what happened at Ruby Ridge, Idaho, or Waco, Texas;

(12) Ranking federal officials have supported hearings by the U.S. Senate to dispel public rumors that the Oklahoma City bombing was planned and carried out by federal law enforcement officials;

(13) It has been represented, or at least widely rumored, that the motivation for the Oklahoma City bombing may have been related to the Waco incident, the dates falling exactly two years apart; and

(14) A U.S. Senate hearing, or at least setting the date for such a hearing, on Waco and Ruby Ridge would help to restore public confidence that there will be full disclosure of what happened, appropriate congressional oversight and accountability at the highest levels of the federal government.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held before the Senate Judiciary Committee on countering domestic terrorism in all possible ways with a hearing on or before June 30, 1995, on actions taken by federal law enforcement agencies in Ruby Ridge, Idaho, and Waco, Texas.

HATCH AMENDMENT NO. 755

Mr. HATCH proposed an amendment to amendment No. 754 proposed by Mr. SPECTER to the bill S. 534, supra; as follows:

Strike all after the first word and insert the following:

SEC. . SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco and Firearms, to investigate and effectuate (or seek to effectuate) the arrest of Mr. David Koresch and others associated with the Branch Davidian sect in Waco, Texas;

(2) The American public is entitled to a full, comprehensive, and open hearing on the circumstances surrounding the efforts of federal law enforcement officers, including agents from the Federal Bureau of Investigation, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco and Firearms, to investigate, and effectuate (or seek to effectuate) the arrest of Mr. Randy Weaver and others associated with Mr. Weaver, in Ruby Ridge, Idaho;

(3) The Senate has not yet conducted comprehensive hearings on either of these incidents;

(4) The public interest requires full disclosure of these incidents through hearings to promote public confidence in government; and

(5) The public's confidence in government would be further promoted if the timing of the hearings takes into consideration the need for such hearings to be conducted in an atmosphere of reflection and calm deliberation.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that hearings should be held in the near future, before the Senate Judiciary Committee, at a time and under such circumstances as determined by the Chairman, regarding the actions taken by federal law enforcement agencies and their representatives in the aforementioned Ruby Ridge and Waco incidents.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 10, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to consider the nomination of James J. Hoecker to be a member of the Federal Energy Regulatory Commission.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Wednesday, May 10, 1995, for purposes of conducting a full committee hearing which is scheduled to begin at 2 p.m. The purpose of this hearing is to receive testimony on the Federal Energy Regulatory Commission's notice of proposed rulemaking and supplemental notice of proposed rulemaking, "Promoting Wholesale Competition Through Open-Access Non-discriminatory Transmission Services by Public Utilities" (Docket No. RM95-8-000), and "Recovery Stranded Costs by Public Utilities and Transmitting Utilities" (Docket No. RM94-7-001).

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

COMMITTEE ON FINANCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Wednesday, May 10, 1995, beginning at 9:30 a.m. in room SD-215, to conduct a hearing on the World Trade Organization Dispute Settlement Review Commission Act and on the nomination of Jeffrey Lang to be Deputy U.S. Trade Representative.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. GORTON. 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 10, 1995, at 10 a.m.

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

COMMITTEE ON THE JUDICIARY

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 2:30 p.m., to hold a hearing on "The Role of the Military in Combating Terrorism."

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. GORTON. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 2 p.m., to hold a closed hearing on intelligence matters.

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

SUBCOMMITTEE ON AIRLAND FORCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Airland Forces of the Committee on Armed Services be authorized to meet at 3 p.m., on Wednesday, May 10, 1995, in open and closed session, to receive testimony on tactical intelligence and related activities in the Army and Air Force in review of S. 727, the National Defense Authorization Act for Fiscal Year 1996, and the future years defense program.

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

SUBCOMMITTEE ON IMMIGRATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Immigration Subcommittee of the Committee on the Judiciary be authorized to meet during the session of the Senate on Wednesday, May 10, 1995, at 9:30 a.m., to hold a hearing on "Verification of Applicant Identity for Purposes of Employment and Public Assistance."

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

ADDITIONAL STATEMENTS

AN ETHICAL DILEMMA

• Mr. SIMON. Mr. President, there is a lot of emotion and not much rationality to the question of whether we use fetal tissue to assist people who have problems, particularly with Parkinson's disease.

It is interesting that in the U.S. Senate, many of those who support the use of fetal tissue comprise those who are totally opposed to abortions.

I believe their stand makes sense, much more sense than those who emotionally oppose use of fetal tissue.

If for a reason of taste, or culture, or religion, people are opposed to any transplant, I understand it.

When I die, if my eyes or any part of me can be used to be of assistance to someone else, I want that done.

I would think most people who have had an abortion would want the same.

The requirements are very strict. You cannot make any money on it. You cannot designate to whom the tissue would go. You cannot even know to whom it is going.

Joan Beck has written a column in the Chicago Tribune that outlines the situation clearly, and I ask that it be printed in the RECORD.

The column follows:

[From the Chicago Tribune, April 30, 1995]

AN ETHICAL DILEMMA—IN DEFENSE OF FETAL TISSUE TRANSPLANTS TO TREAT NEUROLOGICAL DISORDERS

(By Joan Beck)

He was 59 years old and he had had Parkinson's disease for eight years. His body was becoming increasingly rigid and immobile. He had trouble moving and talking clearly. He had tremors he couldn't stop and he had to give up his job.

The medication that had helped early in the onset of the illness could no longer give him much relief, despite increasing doses. As the disease inexorably progressed, he decided to try a new, experimental treatment, despite the intense political and medical controversy that has marked its development.

Surgeons inserted several grafts of fetal tissue into one side of his brain. A month later, they repeated the procedure on the other side. The transplants came from seven donors, aborted babies from 6½ to 9 weeks old.

Within a few weeks after the surgery, the man's condition improved markedly, according to a report in the current issue of the New England Journal of Medicine. He could once again handle daily activities, even take part in an active exercise program. He needed less medication, but now it was much more effective.

A year and a half after the first transplant, the patient had surgery on his ankle to repair damage from a fracture years earlier. As he was recovering from the operation, he suffered a massive pulmonary embolism and died.

Studying his brain after death, doctors found conclusive evidence that the transplants had worked as hoped. The fetal neurons had survived, grown and were functioning, replacing the patient's damaged brain cells, just as the improvement in his symptoms had indicated.

An estimated 200 transplants of fetal tissue into human brains have been done over the past several years. Some have been performed in other countries, some under scientifically questionable circumstances. Results have been uneven and often discouraging.

The case reported this week is important because it is the first to prove that fetal tissue transplants can survive and function and that they can be linked to a patient's improvement.

The long-range implications are medical, political and ethical. The success story offers eventual hope for hundreds of thousands of patients, not only with Parkinson's disease but also with Huntington's disease, Alzheimer's disease and other disorders caused by brain cell impairment and destruction for which no good treatment or cure is now available.

Much research is still necessary, however. More data are needed about optimal size of the grafts, whether the tissue can be frozen in advance, which patients are likely to benefit, how long improvement will last, whether the underlying disease will eventually destroy the new brain cells.

Fetal tissue is considered necessary for transplants because it can survive and grow where grafts of more mature cells do not. It can take on new biological functions, unlike other cells. And the recipient's body is not so likely to reject it.

But the research has been slowed in the past for political and ethical reasons.

The problem is that such transplants almost always must come from abortions—and that has raised fierce and intractable opposition from pro-life forces. They see the possibility that women will deliberately get pregnant and have an abortion to provide a graft for a loved one—or even worse, sell the tissue on some sort of medical black market.

Even with tight controls, abortion opponents argue, using tissue from aborted fetuses will make it easier for women to decide to have an abortion because they can rationalize that some desperately ill person could benefit and that might ease any guilt feelings they may have.

Should fetal transplants eventually prove to be of great medical benefit and become widely used, it will be even harder to rally the nation to oppose abortion—the source of such grafts—pro-life leaders fear.

In response to anti-abortion fervor, the Reagan administration prohibited the use of federal funds for research using fetal tissue for humans, a major setback because most research grants are based on federal approval. Some experiments did continue, however, using private money, and in other countries.

Under mounting pressure from Congress, President Bush attempted a compromise. He authorized a grant of more than $2 million to study whether fetal tissue obtained as a result of miscarriages and ectopic pregnancies—not deliberate abortions—could be used for transplants.

The answer turned out to be no. Out of 1,500 such fetuses tested, all but seven were unsuitable because of chromosome errors (a major cause of miscarriage) or problems with bacteria and virus contamination.

In 1993, President Clinton finally lifted the ban on federal funding for fetal tissue research. The use of such transplants is carefully governed by state and federal laws and government and medical guidelines similar to those that cover other transplants, including the Uniform Anatomical Gift Act which has been adopted in all states.

The stark facts remain. Abortion is legal in the United States. About 1.5 million abortions occur every year. Aborted tissue is now discarded, even though it holds the potential for successfully treating several terrible, intractable diseases.

Abortion is a tragedy, as is death from gunshot wounds and traffic accidents. But the success of fetal tissue grafts isn't going to encourage abortion any more than organ transplants increase car crashes and murders.

Research is under way to find other means to treat neurological disorders, some of it building on findings from fetal tissue studies. But until these experiments are successful, surely it is more ethical and merciful to try to use fetal tissue than simply destroy it.•

TRIBUTE TO THE GREEN MOUNTAIN BOY SCOUTS

• Mr. JEFFORDS. Mr. President, I rise today to pay tribute to the Green Mountain Boy Scouts and congratulate the Boy Scouts of America on their 85th anniversary. It seems fitting, indeed, that the Green Mountain Boy Scouts of America will hold its statewide camporee on the historic Rutland fairgrounds. While 10,000 Vermont scouts and 4,000 adult volunteer leaders will be marking the 85th anniversary of the Boy Scouts of America in June, the Rutland Fairgrounds prepares to celebrate the 150th anniversary of the Vermont State Fair.

To these fairgrounds in 1861 came 1,000 young men to form the First Vermont Regiment of infantry, the initial unit sent from Vermont to fight in the Civil War. It is my understanding that the first night in camp, a chill wind came down off Pico and Killington flattening many of their tents. It was a strong omen, for hard times were ahead for the Vermonters who went off to fight in that war. Before it was over, nearly 35,000 young men from Vermont would serve, and more than 5,000 would give their lives.

Those lads, every one of them volunteers, established a model of service from which Vermont did not falter during four bloody years. It is a model that we still find personified by the young people, and their leaders, who fill the ranks of scouting in Vermont.

Not only do scouts well serve the communities in which they live, they are constantly acquiring knowledge and skills which will serve them well in later years—and make them better citizens. In scouting lies much of the hope for America in the fast approaching next century.

It is reassuring to know that Vermont still has within its borders able young people willing to serve in the best interests of their State and Nation, as did the boys of the long ago Civil War days.

I want to congratulate the Boy Scouts of America on their 85 years of excellent service to the United States and welcome the Vermont boy scouts

to my home city of Rutland for their celebration. Rutland is where I served in my youth as a boy scout. I hope the Vermont camporee is as enjoyable and successful as it is historic.●

WORKING FAMILIES ANXIETY OVER EDUCATION CUTS

● Mr. DODD. Mr. President, we should never lose sight of the meaning of the decisions we make here for ordinary Americans and their families. This point was brought home to me by an article in Monday's New York Times, "Families Await News on Cuts in Education Aid." I ask that this article be printed in the RECORD at the conclusion of my remarks.

This is a difficult time of year for parents of college-age children. Along with their sons and daughters, they anxiously await college acceptance or rejection letters and financial aid offers. They worry about children away from home for the first time, about summer jobs, about SAT scores and grades and about the job market for college graduates. But for the vast majority of parents, the biggest worry is how they will be able to make it all possible for their children.

This year, unfortunately, there is another gnawing worry for millions of families who rely on Federal student financial aid to make college possible. Serious cuts in these programs are being proposed. The Contract With America calls for the elimination of one of the key pillars of Federal support for college students—the in-school interest subsidy on guaranteed Federal loans. The Domenici budget plan calls for the elimination of this subsidy for graduate students, but it goes on to proposes overall education cuts so severe that the subsidy for all students is called into question.

In addition, campus-based aid programs and other higher education programs are endangered by the severe cuts proposed in discretionary spending for educational activities. This casts a shadow over the future of the College Work Study Program, the Supplemental Education Opportunities Grant Program, the State Student Incentive Grant Program, and the Perkins Loan Program.

Mr. President, education has always been one of the most solidly placed rungs on the ladder of economic opportunity. For generations, American families have sacrificed to assure their access to the best education possible. That has paid off for us as individuals and for us as a nation. And yet many in Congress are prepared to turn their backs on this record of success.

As we debate the budget resolution in committee this week and on the floor as early as next week, there is clearly a great deal hanging in the balance, not the least of which are the hopes and dreams of American families for their children's future. I urge all my colleagues to read this excellent article and consider our country's future.

The article follows:

[The New York Times, May 8, 1995]

FAMILIES AWAIT NEWS ON CUTS IN EDUCATION AID

(By Lynda Richardson)

These are uncertain times for the family of David and Maureen Grau of St. Paul, Minn. As they await final word on financial aid for the colleges that three of their eight children attend, they worry what sacrifices will need to be made, and even which child might not go.

The Graus know that some cuts in Government aid are likely. In the next several weeks, Congress will begin considering the strongest assault in recent years on the array of college loans, grants and work-study programs that many lower- and middle-class families have relied on since passage of the nation's first major Federal student aid program, the Higher Education Act of 1965.

And across the nation, governors and legislatures are cutting the state university budgets and considering deep reductions in aid for impoverished students.

But in the absence of decisions on what will be cut, the most the Graus can do—like thousands of other Americans—is make contingency plans and hope for the best. Two daughters will cram three extra courses into their full college loads next year so they get through school faster, saving tuition. And all three will work full time—or more—this summer.

Baby-boomers, the Graus were themselves beneficiaries of Federal student loans and grants back in the 70's. Mr. Grau, 44, is now a registered nurse; his wife, 42, is a homemaker. With an annual income of $36,500, they save and scrimp. They have not bought new furniture, other than a couch, in 23 years.

The Graus hold many of the bedrock American beliefs that swept the new Republican leadership into office. They go to Mass every Sunday. They are anti-abortion. Each child has a chore at home. Now, they say they are feeling betrayed.

"We never questioned whether or not college education was available to us," Mrs. Grau said. "Loans, grants and college work-study were there for the taking. All that was truly needed was a desire, and now you have a lot of hurdles."

House Republicans have called for $1.7 billion in cuts in money already appropriated in the $34 billion Department of Education budget for the 1995 fiscal year. They have proposed $20 billion in higher education cuts over the next five years.

The largest cut would come from ending the Government subsidy of interest on loans while students are in college, which could save $12 billion in five years. Currently, a student who borrows $5,000 for freshman year owes $5,000 at graduation. Under the proposal, interest would be added to the principal each month, so the $5,000 would become $6,000 or so in debt at graduation. Students would see an average of 20 percent to 25 percent more debt when they graduate, financial aid officers say.

Republican leaders, in their first 100 days, also suggested dismantling Federal aid programs that are managed by colleges, including the Perkins loans for needy students, Supplemental Educational Opportunity Grants and work-study programs in which the Federal government pays 75 percent of a student's salary and the institution pays the rest.

"It is safe to say that every low- and middle-income family with a student in college and hoping to send a child to college has a stake in the outcome of the debate that Congress is holding now and will be holding for the next few months," said Terry Hartle, spokesman for the American Council on Education, a Washington-based association of 1,700 colleges and universities. "Many families would find their plans for college disrupted, fundamentally changed or eliminated by major changes in Federal student aid."

But the Republicans who have proposed them say the cuts are necessary for the financial health of the nation. Bruce Cuthbertson, a spokesman for Representative John R. Kasich, the Ohio Republican who chairs the House Budget Committee, said of loan subsidies, "We think it's a matter of fairness. We just put this on equal footing with all other types of loans one would receive."

The potential cuts have stirred public protests and private anguish. In the Bronx, Elba Velez, a single mother of three, worries that the cuts will halt her family's fragile upward mobility.

"The programs that are being cut are for the people who need them the most," said Ms. Velez, who left welfare behind after getting her degree in the 70's. Her son is a freshman at Wesleyan University.

Carmen Vega Rivera and her husband, John, worry that their high school senior will never go to college. Financial aid was crucial to Mrs. Rivera's education. She now heads an East Harlem tutorial program.

THE PRESENT—BEING MARRIED WITH CHILDREN

The three Grau college students are among the nearly half of all 14.7 million college students who receive student aid. Two daughters attend Concordia College, a small liberal arts school in St. Paul, and the third is at the University of St. Thomas there. Besides the subsidized loans, the young women get a wide array of aid from the Federal Government, the state and the college, and both work during the school year.

At Concordia, Amy, a sophomore, who lives at home, received $12,305 in aid this year. Her sister, Sarah, a freshman who lives on campus, was awarded $13,308. The total cost of Concordia is $15,550 for dorm students and $14,500 for students living off campus. The Graus pay the rest.

Their older sister, Rochelle, a junior who plans to attend graduate school, is interested in biomedical ethics and philosophy. She received $17,028 in aid this year to pay for books, fees and other expenses at St. Thomas, which has an average student cost of $16,263.

Rochelle and Amy are lining up full-time summer jobs, as counter help at a fast-food restaurant and as an office administrator. Sarah will work as a counselor at a day camp.

"They are thinking maybe a part-time evening and weekend job also," said her mother, Maureen Grau, 42. This would rule out summer courses, but the women want enough money to pay their expenses all year.

Mrs. Grau received a degree in health and physical education at the College of St. Catherine in town. Mr. Grau received a degree in English and education at St. Thomas. He taught, then worked as a mechanic. Four years ago, he returned to college to become a nurse.

Mr. Grau says he and his wife are not in a position to help their college-age daughters

because they have five more children at home, ages 8 to 17. "How am I going to educate them?" he asked. "I don't know."

THE PAST—ERECTING A LADDER OF OPPORTUNITY

For the Graus, the commitment to college education goes back three generations on Mrs. Grau's side; four on her husband's. But for hundreds of thousands of low-income Americans, like Elba Velez of the Bronx, the "War on Poverty" in the 1960's brought access to college degrees for the first time. Federal student-aid programs began small but expanded under the Nixon, Carter and Reagan Administrations.

Not since the G.I. Bill, after World War II, had the Federal Government played so strong a role in insuring that a specific segment of the population got a chance to go to college. Minority enrollment, in particular, showed a dramatic increase.

"The generation that preceded this one has tremendously benefited from Governmental assistance to attend college," said Jamie P. Merisotis, the president of the Institute for Higher Education Policy in Washington. "Both for individuals and the nation, the payoff is clear."

Ms. Velez was on welfare in the 1970's when she decided to go to college. She had considered a job in Manhattan's garment district but said that when she saw the assembly lines of uneducated women hunched over heavy machinery, "I looked around and said, 'This is not for me. I'm going to take charge of my life. I'm not going to let anyone tell me what I am going to be.'"

Ms. Velez enrolled at Bronx Community College in 1979. With the support of Federal Pell grants—created in 1972—and state tuition aid for needy students, she received a bachelor's degree in business administration from Baruch College in 1983.

"I have more power," she said. "I am able to provide for my children, but I'm also able to give back to the community."

But she is concerned about her children's future, with the cost of private colleges averaging $9,995 last year. "I just want my children to have an opportunity to go on to school," she said.

Her 19-year-old son, Daniel, a bookish young man interested in science and creative writing, gets a $13,975 scholarship from Wesleyan University in Middletown, Conn. In a work-study job that pays $1,400 a year, Daniel re-stocks and cleans the salad bar in the dining hall. He also receives $7,825 annually in subsidized loans, as well as Pell and Supplemental Educational Opportunity grants. He and his mother contribute about $2,090 a year to make up the rest of Wesleyan's $26,790 tuition and board costs.

To offset college costs next year, Daniel hopes to find summer work at a fast-food restaurant.

His sister, Felicia, a senior at Central Park Secondary School in East Harlem, was recently accepted at Syracuse University. Her financial package covers only $19,000 of the school's $25,000 cost. Felicia cannot expect much help from her mother.

And just last week, Ms. Velez learned that she may be laid off at Bronx Community College as part of the cost cutting proposed for the city university system.

THE FUTURE—$93,000 A YEAR AND STILL WORRIED

Walking into a noncredit class at New York University more than two decades ago, Carmen Vega Rivera remembers the sea of mostly Hispanic and black faces. Like Mrs. Rivera, many also were first-generation college students.

She and the others were enrolled in the state's Higher Education Opportunity Program, created in 1969 for students with both academic and financial need who wanted to go to private colleges. Gov. George Pataki proposes cutting that, along with similar programs at state and city universities, though many legislators are fighting to restore the programs. H.E.O.P. alone would save $22.5 million this fiscal year, the Governor's office said.

Mrs. Rivera was 49th of 500 students at the High School of Art and Design in midtown Manhattan but scored poorly on the verbal portion of the Scholastic Assessment Test. "My chance of coming through the traditional admissions was not likely," she said.

With intensive counseling, emotional support and tutoring in the special N.Y.U. class, Mrs. Rivera received her bachelor's degree in education and the arts in 1976.

Now, at 41, she earns $65,500 a year as executive director of the East Harlem Tutorial Program. Her husband, John, who manages a commercial building, only recently began a $27,000-a-year job. He had stayed at home for the last decade to look after their son, Jaime, now 10.

Still, even with a $93,000 combined income, Mrs. Rivera said her family lives from paycheck to paycheck, renting an $800-a-month apartment near Yankee Stadium. There are bills for medical problems and deaths in their extended family, and they support a 17-year-old daughter, Taina, and her 7-month-old child.

If Mrs. Rivera had her dream, Taina would attend New York University, she said. But as the family now explores state and city universities, everything seems up in the air.

"As a parent, it's eating up my mind all the time," she said. "I'm thinking, 'How am I going to pull it off? Is it all going to work out?'"•

TRIBUTE TO AVIS B. BAILEY

• Mr. BUMPERS. Mr. President, I rise today to pay tribute to a fellow Arkansan, Avis B. Bailey. Avis is the owner of Avis Nissan in Fayetteville, and I am proud to say, was honored last week by the U.S. Small Business Administration as the 1995 Arkansas Small Business Person of the Year. I had a chance to visit with Avis and her husband last week on the Capitol steps, and I was immediately convinced that this honor is richly deserved.

Avis Bailey was born and raised in Prairie Grove, AR. The youngest of six, she married right out of high school and then moved with her husband to Tulsa, OK. Twelve years later and a single parent, she returned to northwest Arkansas and settled in Fayetteville, where she worked in her brother's transmission repair shop. In 1971, Avis took another job as a cashier at Hatfield Pontiac and Cadillac, one of Arkansas' oldest and most respected Cadillac dealerships. This became job No. 3 for her. However, in less than 2 years Avis was out from behind the cashier's desk crunching numbers and in the showroom selling Cadillacs. It was not long before she became one of the State's top salespersons for automobiles and, within 10 years, manager of the dealership.

Avis told me she could remember when new Cadillacs started selling for over $10,000. It was at that time that her father told her she needed to get out of the business. He said no one would pay that much for a car. Mr. President, 20-some-odds years and many success stories later, Avis B. Bailey bought that Pontiac-Cadillac dealership where she started as a cashier. I know many people who still dream of owning a Cadillac someday, and here is Avis with a whole parking lot full. Her whole career is a testament to what hard work and dedication can accomplish. She has truly risen through the ranks of the small business world.

In 1991, Avis bought a Nissan dealership that was nearly bankrupt. Its standing in the community was down, but Avis took the initiative and the gamble to take that failing business and turn it around. Within 3 years, she more than doubled the volume of sales and her number of employees. Sales totaled $11.7 million in 1994 for Avis Nissan. Avis and her partners have also bought four more automobile dealerships in Arkansas, adding both to the economy and to the community. She and her partners are now owners of Mazda and Ford dealerships in northwest Arkansas as well.

Mr. President, we need more people like Avis Bailey in this country. She is more than a shrewd business woman. She is filled with a spirit that can make a difference. Avis avidly supports the athletic programs of the University of Arkansas, she is a member of both the Fayetteville and Springdale Chamber of Commerce, and she's a friend to area grade schools, working to furnish school supplies and clothing. We need more people who aren't afraid to roll up their sleeves, work hard, and make a difference in their communities. Mr. President, I hope you will join me in congratulating Avis Bailey on being named the Arkansas Small Business Person of the Year for 1995.•

THE MISSING SERVICE PERSONNEL ACT

• Mrs. FEINSTEIN. Mr. President, I am pleased to cosponsor the Missing Service Personnel Act of 1995, introduced by Senators DOLE and LAUTENBERG earlier this year.

The Missing Service Personnel Act is a significant and an appropriate piece of legislation. It would establish new methods for determining the status of missing service personnel and improving the means by which full accountability is achieved. Due in part to the handling of POW/MIA cases by the Department of Defense and the United States Government since the Vietnam war, existing procedures have been criticized as being unresponsive to the needs of effected families. In fact, current law does not adequately address issues that have emerged over the past

25 years regarding how missing persons and their families are treated by Government officials. S. 256 would implement procedures which foster a sense of trust and credibility between the Government and families of missing personnel, while attempting to ensure fairness to all involved.

Considering the tremendous sacrifices our men and women make when facing combat, maintaining credibility and trust are crucial. Soldiers face the terrible prospect of capture and, in turn, their loved ones face the horrible possibility of intense anguish and heartache. We must assure our armed services personnel and their civilian counterparts that the United States will do everything possible to return them home safely in the event they turn up missing in action. At the same time, they must also be assured that more open and fair procedures will be established to determine their exact status. S. 256 takes concrete steps to achieve these objectives.

There are, however, some issues with the bill that I think still need to be reviewed. For instance, S. 256 restricts identification of recovered remains to licensed practitioners of forensic medicine. Utilization of personnel in disciplines other than medicine which may be appropriate are not permitted. According to DOD, such a requirement would be unreasonable during combat operations or on the battlefield. Moreover, as this legislation would be retroactive to World War II, DOD may be required to review thousands of cases. The Defense Department has indicated that it does not have the personnel or budget to handle such a workload. These are some issues that I hope the Senate Armed Services Committee will look into when reviewing this legislation.

Overall, I believe that S. 256 is an important and noteworthy bill. The Government has been perceived as being unresponsive to the needs of families whose loved ones are classified as missing in action. This legislation would safeguard the rights of missing armed service members while addressing the concerns of their effected families and the Federal Government. I am pleased to cosponsor the Missing Service Personnel Act.●

ORDERS FOR THURSDAY, MAY 11, 1995

Mr. SPECTER. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until 9:30 a.m. on Thursday, May 11, 1995; that following the prayer, the Journal of proceedings be deemed approved, the time for the two leaders be reserved for their use later in the day, and the Senate then immediately resume consideration of S. 534, the Solid Waste Disposal Act.

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

PROGRAM

Mr. SPECTER. Mr. President, for the information of all Senators, the Senate will resume consideration of the Solid Waste Disposal Act tomorrow. Further amendments are expected to the bill, therefore Senators should anticipate rollcall votes throughout Thursday's session of the Senate, and a late night session could occur with votes into the evening. A cloture motion was filed on the substitute this evening. It is the hope of the leader, Senator DOLE, that the Friday vote could be vitiated if an agreement can be reached to conclude the bill by Friday. Otherwise, a cloture vote will occur Friday morning.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER. The Chair, on behalf of the Vice President, pursuant to 22 U.S.C. 276h–276k, as amended, appoints the following Senators as members of the Senate delegation to the Mexico-United States Interparliamentary Group during the first session of the 104th Congress, to be held in Tucson, AZ, May 12–14, 1995: the Senator from Iowa [Mr. GRASSLEY]; the Senator from Alaska [Mr. MURKOWSKI]; and the Senator from Washington [Mr. GORTON].

RECESS UNTIL 9:30 A.M. TOMORROW

Mr. SPECTER. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 7:08 p.m., recessed until Thursday, May 11, 1995, at 9:30 a.m.

HOUSE OF REPRESENTATIVES—*Wednesday, May 10, 1995*

The House met at 11 a.m.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

We are reminded by the Psalmist that Your Word, O God, is a lamp to our feet and a light to our path. In these times when there are many options available to people in their lives and diverse opinions and ideas, we pray for lamps to lighten our way and show us the course to follow. We recognize that we can communicate with all the authorities from every background and attempt to gain all knowledge, and yet we know that to be touched by Your spirit is the beginning of wisdom. May that spirit, O God, that is new every morning, encourage and lighten our path, now and evermore. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentlewoman from North Carolina [Mrs. CLAYTON] come forward and lead the House in the Pledge of Allegiance.

Mrs. CLAYTON led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY CHAIRMAN OF THE COMMITTEE ON RULES ON AMENDMENT PROCESS FOR THE BUDGET RESOLUTION

(Mr. SOLOMON asked and was given permission to address the House for 1 minute.)

Mr. SOLOMON. Mr. Speaker, the Rules Committee is planning to meet on next Tuesday, May 16, to grant a rule which may limit the kind of amendments offered to the concurrent resolution on the budget for fiscal year 1996.

Members are strongly advised to submit only amendments in the nature of a substitute which provide for a balanced budget not later than the year 2002.

Any Member who is contemplating an amendment to the budget resolution should submit 55 copies and a brief explanation by 5 p.m. on Monday, May 15, to the Rules Committee, room H–312 in the Capitol.

Members should use the Office of Legislative Counsel and the Congressional Budget Office to ensure that their amendments are properly drafted and should check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House.

A FAILURE TO ACT

(Mr. DELAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DELAY. Mr. Speaker, as we start the budget process today, we will hear many doomsday predictions from liberal Democrats about the Republican approach to balancing the budget.

Sadly, we will not hear a thing about the Democrat approach because there is no Democrat approach to balancing the budget. That failure to act is a monumental decision.

A failure to act on the budget means higher interest rates, slower economic growth, and less job opportunity for working Americans.

A failure to act means higher taxes and more wasteful government spending. A failure to act means less buying power for American families, a heavier burden on our middle class, less stability for our senior citizens.

A failure to act means a bankrupt Medicare system. A failure to act means a less secure future for our children.

Mr. Speaker, the Democrats have failed to act, and that failure is completely irresponsible. I urge the American people to keep that in mind as House Democrats come to the floor with their hysterical charges.

CUTTING MEDICARE AND MEDICAID SO THE WEALTHY GET A TAX BREAK

(Mr. VOLKMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. VOLKMER. Mr. Speaker, I rise today, the 126th day of the imperial speakership, to protest the proposed Gingrich Republican budget plan. This plan would cut Medicare and Medicaid Programs by over $400 billion so that the wealthy can have a tax break.

Two months ago, Mr. Speaker, the Gingrich Republicans voted to cut benefits for children in the School Lunch Program. Then they attacked the Student Loan Program. Now it is the elderly through cuts in Medicare and Social Security. The Republicans have stated time and time again they would not touch the Social Security system, but their proposed fiscal year 1996 budget would decrease cost-of-living increases for Social Security recipients.

There is no reason that we should be making these cuts that will hurt the elderly, the young, and those hoping to lead our country during the next century, our college students, so that those making over $200,000 a year can be given a big tax break. That is right. Those 1 million fortunate Americans who make over $200,000 a year will be getting a $20,000 tax break while 37 million seniors are losing $900 a year.

THE REPUBLICAN BUDGET IS A CONTRACT WITH OUR CHILDREN

(Mr. TIAHRT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TIAHRT. Mr. Speaker, once again we are experiencing a historical day. Today the House Committee on the Budget will submit a plan to balance the budget by 2002. It is the only plan around today to balance the budget, and it has been since 1968 that the Federal Government has balanced its budget resulting in almost a $5 trillion debt. Common sense tells us that we can no longer afford such irresponsibility. We can no longer put the burden of this debt onto our children. The budget Republicans will introduce is a contract with our children. We must balance the budget so our children's future will be free of debt and full of opportunity.

This budget and the debate is not about money as much as it is about our children. We cannot allow an out-of-control Federal budget to rob our kids of freedom and economic security. It is just plain wrong to make them responsible for our mismanagement.

I ask my colleagues to join together on this historical day and help restore the American dream to our children.

BALANCING THE BUDGET ON THE BACKS OF SENIORS

(Ms. JACKSON-LEE asked and was given permission to address the House

for 1 minute and to revise and extend her remarks.)

Ms. JACKSON-LEE. Mr. Speaker, I rise this morning, as the Committee on the Budget is meeting and deliberating. But more importantly, as we are instructed to keep close to our constituents, I have come back recently from interacting with the constituents of the 18th Congressional District in Texas, and what I have heard most of all is that we should work together, that we should focus our issues not as Democratic or Republican, but as American issues, and yet, as the Committee on the Budget deliberates, they now talk about cutting Medicare spending between $270 and $280 billion over the next 7 years and $184 billion for Medicaid.

Mr. Speaker, these are not working-class/middle-class issues. These are issues of the American working people who want to confront better health care for their citizens.

My seniors have said to me, "Don't cut Medicare, make it more efficient. Cut the waste, but don't cut Medicare."

Now we find that the new budget plan is on the backs of seniors in America. But it is not only on the backs of seniors. It is on our medical facilities, our community hospitals. It is on our physicians who dedicate their lives to serving American working people.

We must confront this as an American issue, and we must not turn our backs on our seniors. I will not let Texas down. I will not let the citizens of the 18th Congressional District down by recklessly cutting Medicare and Medicaid for an ill-conceived budget.

WE ARE NOT CUTTING MEDICARE

(Mr. BARTLETT of Maryland asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BARTLETT of Maryland. Mr. Speaker, I feel compelled to respond to the allegations that this budget cuts Medicare and cuts Medicaid; that just is not true. Just look at the budget, and look at the figures in the budget. Today every Medicare recipient, the average across the country, gets $4,700. At the end of this budget process that will have risen to $6,300. That is not a cut.

What we are going to do is to preserve the Medicare system. It is now doomed unless one does something about it going bankrupt by 2002. We are not cutting Medicare. It will increase from $4,700 to $6,300 per every recipient; that is not a cut.

Let me say it again: When you go from $4,700 to $6,300, that's not a cut.

Please be productive. Please join us in this process to perfecting a budget that is going to save our country for our children. Do not continue with these misstatements of fact.

REPUBLICAN TAX CUTS FOR MILLIONAIRES WILL LEAD TO RATIONING OF HEALTH CARE

(Mr. BROWN of Ohio asked and was given permission to address the House for 1 minute.)

Mr. BROWN of Ohio. Mr. Speaker, Republicans love to say that they are not cutting Medicare and Medicaid, they are only slowing their growth. What they do not tell us is that Medicare and Medicaid reform is actually health care rationing. House Republicans want to cut Medicare and want to cut Medicaid to pay for tax cuts for the wealthy, for wealthy special interests and to pay for star wars. Republicans want to force the elderly into HMO's and to health maintenance organizations which will only lead to rationing of health care and will lead to taking away of physician choice. Republicans want to do that all because some people in this House want to cut taxes on millionaires, cut taxes on millionaires forcing Medicare and Medicaid patients into rationing and taking away their physician choice. Mr. Speaker, it simply does not make sense.

WASHINGTON PHILANTHROPY

(Ms. PRYCE asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE. Mr. Speaker, in the early 1990's, a study was completed by political scientist James L. Payne. Mr. Payne tabulated the witnesses who appeared before congressional hearings. The findings are astonishing. He found that 95.7 percent of those who appeared came to urge more spending. Only 0.7 percent came to urge against more spending.

Washington has created a culture of spending. People come to Washington, perhaps with good intentions, and are sucked into this philanthropic swirl, where problems somehow go away if more tax dollars are spent.

Well, the game is up. Last November, the American people said "enough" and put Republicans in charge of Congress to put an end to the 40-year-long philanthropic tendencies of our friends on the other side.

If spending tax money truly solves problems, America would be the most trouble free society in the world. But we're not. Today, America is facing a $4 trillion national debt in the face of some of the worst societal conditions we have ever witnessed. It's time to break Washington's spending culture. Philanthropy is a wonderful thing, but not with tax dollars.

MEDICARE AND MEDICAID CUTS WILL PUSH MANY SENIORS BELOW THE POVERTY LINE

(Mr. WAXMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WAXMAN. Mr. Speaker, the level of Medicare and Medicaid cuts would gut health care for the elderly and the poor leading to rationing of health care to those people to whom we promised health security: $400 billion over 7 years; that is a breathtaking amount. That will mean cuts in Medicaid for the frail, elderly, and nursing homes, leaving them to languish there without care, if they are lucky enough to get into a nursing home at all. Community, at-home-nursing services will be cut, denying them that assistance as well. Hundreds of hospitals and clinics will be forced to close because they will not be able to afford care to the newly under-insured as well as all the uninsured of which there are 42 million in this country, a problem the Republicans even refuse to acknowledge exists. Doctors will turn Medicare patients away as their payment levels to them start resembling those for Medicaid, and greater costs will be borne for the elderly who live on fixed incomes, many of whom will be pushed below the poverty line.

Mr. Speaker, this budget is cruel, it's cynical, and it's mean.

ENDANGERED SPECIES ACT DESTROYING SANTA ROSA ISLAND

(Mrs. SEASTRAND asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SEASTRAND. Mr. Speaker, today I bring to light another example of the overreaching arm of the Federal Government. Santa Rosa Island off Santa Barbara, CA, happens to be one of the homes for the snowy plover bird. The National Park Service has decided that the snowy plover is so endangered by cattle ranching on the island that a 3-mile-long fence and road must be built to protect the bird. The local ranching company must build the fence within 7 days or the Government will do it for them and give them the bill. Scientific data proves that cattle ranching on Santa Rosa Island does not endanger the bird. In fact a strong case can be made that 93 years of cattle ranching has actually led to a greater proliferation of the bird.

□ 1115

Unfortunately, the Department of Fish and Wildlife refused to review this data.

Mr. Speaker, the Endangered Species Act was supposed to protect species in danger of becoming extinct. It was not meant to be a vehicle to destroy the well cared for environment of Santa Rosa Island.

CUTTING WELFARE TO FUND TAX CUTS IS WRONG

(Ms. FURSE asked and was given permission to address the House for 1

minute and to revise and extend her remarks.)

Ms. FURSE. Mr. Speaker, I am here because my constituents have asked me to speak out for their interests. I want to read what they have said. James Gamwill wrote to me and said, "I hope you will use your good office to prevent cuts in Medicare. It aids seniors whose health may not be so robust. The high cost of health care puts us in a financial bind."

Or Louise Robertson, who wrote from Aloha, OR. She said, "I urge you strongly to fight all attempts to diminish Social Security and Medicare benefits."

Well, in their interests, I say shame on this Republican budget, because it cuts senior health care protection, it gives tax cuts to the wealthy, and it increases Pentagon spend spending. This budget hurts all working families, American families, and Oregon families. I think it is wrong, and I know that many Oregonians think it is wrong too.

A TIME FOR ACTION

(Mr. GUTKNECHT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUTKNECHT. Mr. Speaker, I am a firm believer that actions have consequences. By the same token, doing nothing can have consequences as well. If Congress does nothing about Medicare or the budget, I doubt America could survive the consequences.

The actions of Congress over the past generation have resulted in an enormous national debt. Servicing this debt consumes a large chunk of the over-all budget. If Congress does nothing about the disastrous trend of deficit spending, in 10 years we will be unable to meet other obligations while servicing the debt.

Likewise, if Congress does nothing to protect Medicare, it too will become insolvent in just 7 years. Let me be clear, this information is coming from President Clinton's own people and is not a Republican gimmick.

Mr. Speaker, the consequences for doing nothing are too great. We here in Congress have the ability and the responsibility to do something about these two problems. The debt poses a threat to future generations and a collapse of Medicare would hurt older Americans. Now is not the time for inaction or the arrogant avoidance of responsibility that has permeated Washington.

MEDICARE: THE REAL CONTRACT WITH AMERICA

(Mr. FARR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FARR. Mr. Speaker, there is a lot of talk these days about contracts.

There is the Republican Contract With America.

There is the contract with America's veterans.

There is the contract with Federal retirees.

And there is the contract with senior citizens.

So far this year, the spotlight has been on the Republican Contract With America. The Republicans are quite boastful about moving their contract through the House in 100 days.

But what about the other contracts? What about the promises made to veterans, Federal retirees, and senior citizens?

I am particularly concerned about breaking America's contract with our senior citizens.

For years we have promised reasonable health care through the Medicare system. Now the Republicans are willing to sacrifice Medicare—and the seniors who depend on it—in order to pay for tax cuts for the wealthy.

If the Republicans want to meet the terms of this country's contract with senior citizens, then they should look elsewhere for their budget and tax fixes than the pocketbooks of our senior citizens.

REPUBLICANS MEAN TO PRESERVE AND IMPROVE MEDICARE

(Mr. FOX of Pennsylvania asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOX of Pennsylvania. Mr. Speaker, the Clinton administration's Trustees Report on Medicare warns that the Medicare trust fund starts to go broke in 1996 and is bankrupt by 2002. House Republicans are determined to save Medicare by using new approaches, new management, and new technologies to improve it, preserve it, and protect it. The current Government-controlled Health Care Financing Administration system has a lot of waste and fraud. The General Accounting Office estimates $44 billion a year in Medicare and Medicaid fraud.

We want to give senior citizens an incentive to fight waste and fraud by paying them 25 percent of any waste or fraud they find in their own bills. House Republicans want to strengthen and empower senior citizens.

House Republicans will increase Medicare spending from $4,700 per retiree today to $6,300 per retiree in 2002. That is a 34-percent increase in Medicare spending per retiree. There is no proposed cut in Medicare spending.

House Republicans will preserve the current Medicare system. We will create a series of new choices so senior citizens can control their own future.

Mr. Speaker, together we can create a Medicare system that offers the best care at the lowest cost, with senior citizens having the greatest control over their own health care.

PROTECT THE MEDICARE TRUST FUND

(Mrs. KENNELLY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. KENNELLY. Mr. Speaker, 50 years ago we celebrated Victory in Europe. And while it would be another 3 months before Japan surrendered, World War II would soon be at an end.

Victory did not come easily. Millions of Americans answered the call of duty, and many gave their lives. On the homefront, men and women worked to keep the country running, and my home State of Connecticut made invaluable contributions in defense manufacturing.

A generation answered the call of duty—now our Government must do the same for them.

If we reform the Medicare system, it cannot be to pay for tax breaks for the few. It must be to shore up the trust fund to benefit seniors.

We can never fully express our gratitude to the World War II generation—words just do not go far enough. However, our deeds can help show our respect. We must protect the Medicare trust fund.

THE INVISIBLE DEMOCRAT PLAN TO BALANCE THE BUDGET

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, yesterday House Republican leaders introduced our 7-year program to balance the budget. Democrats and liberal critics immediately jumped on it, crying and screaming and insisting there is another way to balance the budget without cutting spending.

So to keep the debate in perspective, I thought I would introduce to the people the Democrat plan to balance the budget and take care of Medicare. Here it is. Excuse me, it is upside down, backward. There you go. There you go. This is it, Mr. Speaker, the Democrat plan to balance the budget and take care of Medicare.

I hope it is not in too much detail for my friends on the other side of the aisle. I am sorry to get into such detail during a 1-minute speech. But the fact is, it is May. We have been in session since January. Balancing the budget is a bipartisan responsibility. We are $4.8 trillion in debt. The third largest expenditure on the budget is the interest service on the national debt. Medicare will be broke in 6 years. If we want to help senior citizens, Mr. Speaker, we have got to do a little bit more than this.

SUNDRY MESSAGES FROM THE PRESIDENT

Sundry messages in writing from the President of the United States were communicated to the House by Mr. Edwin Thomas, one of his secretaries.

JAPAN TAKES UNITED STATES TO COURT

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, Japan is suing Uncle Sam. And guess what? This new court is the World Trade Organization. Remember GATT? Supposedly created to promote and enforce free trade? GATT is now being used by the most protectionist nation in world history, Japan, to kill free trade. And listen to what Japan says. We here in Japan believe we have a better than 50-percent chance of winning in court.

Unbelievable, ladies and gentlemen. Congress has been a bunch of wimps, allowed Japan to wreck our economy, wreck our jobs, and now Japan is taking us to court. What is next, Congress? A judgment in favor of Japan in this kangaroo court? Beam me up. Shame, Congress. You have allowed our jobs to be stolen, our companies to be taken overseas, and you are talking about some wild Disney business around here. Straighten out our order of business, our balance of payments, or you will never, never balance our budget.

THE BUDGET

(Mr. BAKER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BAKER of California. Mr. Speaker, today, the House Budget Committee starts work on the first fiscally responsible budget the American people have seen in decades. Many House Democrats will come to the floor, attacking various parts of the budget for being too hard on their special interest groups, I ask my colleagues to reflect on the choice before us today.

We can continue to do things the Democrats' way. We can continue to waste more of the taxpayers' money for more Government programs, more bureaucracy, and more Federal intrusion into the lives of the American people. Or we can go a different route. We can start taking steps that will mean a brighter future for our children, better jobs for working Americans and more security for our Nation.

In the election of 1994, the American people decided that fiscal irresponsibility and broken promises were a thing of the past. With the budget process we start today, Republicans will lead the way to a balanced budget.

PASS BOTH A BUDGET BILL AND A FARM BILL

(Mrs. CLAYTON asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. CLAYTON. Mr. Speaker, we are now in the process of shaping a budget for America for the next fiscal year. Soon, we will consider reauthorization of a farm bill for the next several years. It is my hope that we will pass a budget bill and pass a farm bill. The two bills should not be mixed.

None will dispute that cuts in the budget are inevitable; all will agree that farm programs should bear a share of the cuts. But, $15 billion in reductions is not a cut, Mr. Speaker, it is a severance. $15 billion in reductions will gut the farm programs, will disrupt vital revenue sources in rural communities, and will affect the economy in severe and unintended ways. This issue transcends party and region. It is a direct hit on rural America, and it also strikes a blow against urban America.

Let us pass a budget bill. Then, let us pass a farm bill, but, in our effort to stabilize the budget, we must be careful not to destabilize food production for working families who are America's consumers.

PROTECT AMERICAN AGRICULTURE

(Mr. NETHERCUTT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. NETHERCUTT. Mr. Speaker, we have many tough choices to make during the next several weeks and Republicans have been the first to come forward and face these challenges. But we need to take great care in reducing those programs that have had such a profound effect on our rural communities over the last 60 years. America's rural communities are fading examples of American history—neighbor helping neighbor, family helping family.

We cannot turn back 60 years of farm programs overnight and expect our rural communities to survive. Farm communities can survive through tax and regulatory relief, farm program reform and better trade policy reform. Remember, farm programs have declined an average of 9 percent each year since 1985—a reduction of over $15 billion. If all other Federal programs had taken the same budget reductions during this period, our budget would balance. Assaults on agriculture are not productive, so I challenge my colleagues to roll up our sleeves and learn how important farming is to America.

REFORM THE MINING LAW OF 1872

(Mr. RAHALL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RAHALL. Mr. Speaker, 123 years ago today, President Grant signed into law a bill aimed at promoting the settlement of the Western States. This bill allowed folks to mine valuable minerals such as gold and silver from Federal lands in those States for free. It also allowed people to obtain title to these lands for $2.50 an acre. In one sense, the mining law of 1872 served much the same purpose as the Homestead Act.

Today, the Homestead Act has long since been repealed. The West is well settled. Yet, the mining law of 1872 survives intact, in this age of skyrocketing Federal budget deficits still allowing the wholesale giveaway of valuable Federal lands and minerals. It is incredible, but true, that annually under this law the United States allows about 1.8 billion dollars' worth of gold and silver to be mined for absolutely free.

And for the most part, these minerals are not being mined by the lone prospector of old, but rather, by multinational corporations who reap the benefits of this last great giveaway of American natural resources.

What a shame. What a shame, Congress, to allow lands, owned by every American, to be given away for fast food hamburger prices. To allow billions of dollars worth of the public wealth to be produced for free by corporations based in Luxembourg, Toronto, and London.

Well, happy birthday mining law of 1872. But may I say, I hope there will not be any more such birthdays left to you. My colleagues, please join me and 83 other Members of this body in seeking to reform the mining law of 1872; cosponsor H.R. 357 today.

MEMBERS URGED TO SUPPORT CLEAN WATER ACT REAUTHORIZATION

(Mr. HOSTETTLER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOSTETTLER. Mr. Speaker, I rise in support of H.R. 961, the Clean Water Act reauthorization. We have a chance, with this bill, to provide a great amount of regulatory relief to the American farmer. Farmers depend on the land to make a living, so they are last ones who want to jeopardize ground water with poor ecological practices. But an out-of-control bureaucracy has caused nightmare after nightmare for farm families by implementing a ridiculous definition of wetlands that prohibits producers from farming or improving their property because of puddles in their fields. I am particularly distressed that the National Academy of Sciences would sacrifice sound science for the sake of partisan politics, as shown by the timing

of their recent release on wetlands. I commend my colleague, Mr. SHUSTER, my colleague, Mr. HAYES, and all the others who had a role in providing this much-needed sanity. I urge my colleagues who are interested in getting the government out of the American farmer's way, to support H.R. 961. Oh, by the way, did you notice the Republicans just produced a balanced budget?

□ 1130

THE REPUBLICAN BUDGET

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, the gentleman referenced the balanced budget. He cannot get to a balanced budget while increasing military spending, cutting taxes for the wealthy and the largest corporations, and here is the proof, the Republican budget.

It is impossible to do that unless, unless you want to gut virtually every other program of the Federal Government from child nutrition to student loans, to Federal law enforcement, to veterans benefits, Medicare, and, yes, Social Security.

They will all take a massive cut so the Pentagon can continue its wanton spending and the wealthy can put another BMW in the garage. I expected that kind of a budget, but never, never did I expect that the Republicans would go back on their pledge to not touch Social Security.

Buried deep in this budget is a little change in the COLA factor, just a little change. It will cut future retirement benefits for veterans, future retirement benefits for military retirees, future benefits for every civil service retiree. And yes, Social Security benefits, too, starting in 1999 will be reduced by their budget.

MORE ON THE REPUBLICAN BUDGET

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, I think we should have shame on us for the campaign that is being waged against our efforts to balance the budget. All of us know that it is necessary, if we are going to save this country, to balance the budget. And yet we have a smear campaign of unusual proportions.

My colleagues we hear about cuts in Medicare, except Medicare is going to go up. We hear about specific changes, but you cannot point out those specific changes. You just get up and spout off about them. We talk about tax cuts for the rich, but you miss the whole point, that there is tax relief for the families of America.

We talk about letters from home. I will answer those letters honestly. I am going to save the Medicare Program. I am going to balance the budget.

I believe the cruelest thing we can do is put fear in the hearts of senior citizens. The thinking Americans know that we are going to do it, and they support us.

MEDICARE CUTS

(Mr. SANDERS asked and was given permission to address the House for 1 minute.)

Mr. SANDERS. Mr. Speaker, on behalf of 80,000 Vermont senior citizens who receive Medicare, I rise today in vehement opposition to the proposed 7-year, $400 billion cut in Medicare funding proposed by the Republican leadership.

Today under present funding, many Vermont seniors are hard pressed to pay the high cost of Medicare premiums, and many others cannot afford the expensive prescription drugs that they desperately need. Any cuts which will raise premiums or cut benefits or raise deductible will cause terrible pain for some of the most hard-pressed citizens in America and in Vermont.

It is unconscionable to cut back on Medicare when we are giving huge tax breaks to the wealthiest people in this country. It is unconscionable to cut back on Medicare when we spend $100 billion a year on corporate welfare.

THE PHELPS SCHOOL

(Mr. STEARNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, I rise today to recognize and congratulate the Phelps School from Malvern, PA. The students at that school, the senior class is here today, and I want to recognize them.

The Phelps School whose motto is "dedication to the individual boy," strives to meet the needs and develop the strengths of each of its students.

The teachers and faculty take great pride in empowering young men to improve themselves. The school fosters the growth of each student, academically, socially, and personally. In other words, Mr. Speaker, it builds character, something sorely needed in America today.

The Phelps School is a small institution where every young man feels special, like a member of a family. The Phelps School exemplifies a good education today in America. Students come to the school as boys and leave as young men, ready to further their education.

I take great pride today in welcoming the Phelps School and the senior class. I wish them all the best as they begin their journey toward the rest of their lives. I know they are well prepared and ready for the world, as all the school's graduates have been for almost 50 years. My hat is off to the director, Mr. Phelps, and all the seniors.

REPUBLICANS BREAK CONTRACT WITH SENIORS

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, there is a loud shattering sound all over Capitol Hill today as the Republicans rush to break our Nation's historic contract with its senior citizens.

House Republicans today make it official: They want to cut Medicare and Medicaid by $464 billion in order to pay for a tax cut for the wealthiest Americans.

And now they have added a new ingredient to this sickening stew. Now House Republicans want to redefine the Consumer Price Index and lower cost-of-living adjustments for Social Security recipients. So much for their promise to keep Social Security off the table.

In short, the Republican plan squeezes seniors from both ends. Seniors would have to pay more for health care, and they would be less able to afford that increase because they would get a smaller Social Security COLA.

Altogether, this plan would cost 37 million seniors $900 more a year so a lucky 1.1 million of the wealthiest taxpayers can enjoy a $20,000 bonus.

The Republican plan does not save Medicare. Instead it uses Medicare as a piggybank for tax cuts we cannot afford and do not need.

THE CLEAN WATER ACT, H.R. 961

(Mr. TAYLOR of North Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TAYLOR of North Carolina. Mr. Speaker, I rise today in support of H.R. 961, the legislation to reauthorize the Clean Water Act. As someone with experience in growing trees, I understand the concerns about the so-called nonpoint source pollutions from forests. I appreciate that we have extensive regulations which address other sources and that we are looking to control runoff of water from all sources. You would not know it from the rhetoric, but the forest industry has done a pretty good job already in controlling the problem.

When I was in the State legislature, I cosponsored sedimentation legislation that today on North Carolina's basis controls runoff from forests as well as other sources. Every State in the country with any significant forest activity has what is called best management practices which are sets of very detailed practices which have to

be in place before forest practices are undertaken.

For example, the best management practices include everything from ways to build temporary roads with water bars to prevent runoff in other ways.

I urge support of the Clean Water Act and the bill of the gentleman from Pennsylvania [Mr. SHUSTER].

MEDICARE

(Ms. VELÁZQUEZ asked and was given permission to address the House for 1 minute.)

Ms. VELÁZQUEZ. Mr. Speaker, I rise to take strong exception to the Republicans' proposed massive Medicare and Medicaid cuts. These cuts will hurt the most vulnerable of Americans, our children, our seniors, the poor and the disabled.

Large reductions in Medicare payments will mean increased out-of-pocket costs for seniors. On average seniors will have to come up with another $3,000 for medical expenses once the Republican plan goes into full effect.

The Republican plan also puts the squeeze on urban and rural health centers, institutions that rely heavily upon Medicare reimbursement.

The end result would be hospital closures and declining health among poor and working families. Why are they cutting this program? In order to fund corporate welfare programs and tax cuts for the 1 percent of the families who control 40 percent of the assets in this country. That is right, for the wealthiest Americans.

Let us stop this charade and consider real health care reform.

GEORGE ORWELL, SPIN DOCTOR

(Mr. DREIER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, apparently George Orwell has become the spin doctor for the leadership on the other side of the aisle. Only in Orwell's world or the old Washington, DC, when the Congress was under different leadership, could an increase of from $4,700 to $6,300 for Medicare be considered a draconian cut. That is right.

Under our proposal we are increasing the level of spending for Medicare from $4,700 to $6,300 over the next 7 years, and time after time our colleagues have gotten down here and labeled this a draconian cut which is simply to pay for a tax cut for the rich. Nothing could be further from the truth.

It is wrong for this message to be getting out and tragic that people are being frightened by this kind of message.

Mr. Speaker, the American people want the truth, not the spin. George Orwell should not be the guide for any leadership in this Congress.

99-059 O—97 Vol. 141 (Pt. 9) 17

REPUBLICANS IN THE MEDICARE BOX

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, Republicans are in a box. They are trying to divert attention from what they are trying to do to Medicare. They are cutting Medicare by $300 billion, and they do not know how to explain it.

The reason is that they have to find a way to pay for their tax cuts for a tax cut that benefits 1 percent of the population making over $230,000 per year. That is not class warfare. Those are the facts.

Here are the Medicare excuses: Another commission to study the problem, slow the growth of Medicare, tinker with the Medicare trust fund.

Mr. Speaker, the facts are clear. They are cutting Medicare to pay for a tax cut for America's wealthy, the crown jewel of the Contract With America.

A HISTORIC DAY

(Mr. BOEHNER asked and was given permission to address the House for 1 minute.)

Mr. BOEHNER. Mr. Speaker, today truly is a historic day in America. For the first time in anybody's memory, this Congress today will present to the American people a plan to balance the budget over the next 7 years, a plan that will save Medicare, will improve Medicare for our senior citizens.

It has taken a new Congress to have the guts to bring this issue to the floor of the House because the American people want it. Eighty percent of the American people are demanding that we deal with the fiscal and moral crisis that is occurring in this country and so we have a plan.

I find it interesting that, my colleagues on the other side of the aisle, the President of the United States has no plan. There is no plan from you. And so they are going to criticize. They are going to spread fear amongst the people about what our plan is. But I would urge the American people to ask the other side, the liberals, where is their plan to balance the budget? Where is their plan to save the future for our children and their children? Because the Republican plan to balance the budget is a contract with our children and theirs.

TRADE WITH JAPAN

(Mr. LEVIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, at this moment the U.S. Trade Representative Mickey Kantor is announcing the action by the United States on autos and auto parts under section 301 of our trade laws and the World Trade Organization.

The issue here is clear, opening up the Japanese markets to United States autos and auto parts. We are the free marketeers. The Japanese are the protectionists in this area.

Yesterday the Senate passed overwhelmingly on a bipartisan basis support for the administration position and last night the gentlewoman from Connecticut [Mrs. JOHNSON] and I introduced the same resolution in the House.

It says,

> The House strongly supports the decision by the President to impose trade sanctions on Japanese products in accordance with section 301, unless an acceptable accord with Japan is reached in the interim that renders such action unnecessary.

Let us, as the Senate did, support this effort on a bipartisan basis. For the first time the industry is united. Let us be united and let us negotiate this out with the Japanese so we open up their markets to our goods as our markets are open to their goods.

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CUTTING MEDICARE IS THE WRONG WAY TO BALANCE THE BUDGET

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, let me say that this administration deserves a heck of a lot of credit. For the first time in two decades, we are doing something real to open up Japanese markets. Every time America has a better product, whether it be in automobiles or financial services or anything else, the Japanese come up with a million different barriers and put them in the way. Today we are finally saying "Enough." We are not being protectionist. Our markets are wide open, but so should theirs be.

However, I have one admonition. As we put tariffs on certain Japanese products in an effort to force their markets open, our own manufacturers ought not to take advantage by raising their own prices. We need to have a united front here in America, and no one group, not the automobile manufacturers or anyone else, should take advantage of that.

As long as they do not raise their prices, market share for them will increase, the Japanese will feel the heat, and maybe for the first time in a long time, free trade will be on both sides of the Pacific Ocean.

DESPITE THE RHETORIC, A CUT IN MEDICARE IS STILL A CUT

(Mr. GENE GREEN of Texas asked and was given permission to address

the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, the Republican majority is almost a month late in meeting the statutory deadline for passing a House budget resolution, but finally they've decided to prepare a budget that is even uglier than we thought. If the Republican majority wanted to balance the budget, they could do that today if we cut Medicare, Social Security, and COLA's, but no, their budget is going to cut it 5 or 7 years from now. Medicare faces cuts in excess of $256 billion.

It is true. Despite the public outcry not to cut Social Security or Medicare, Republicans are united in a plan that will directly cut Medicare to pay for a tax cut. They also intend to cut the COLA for Social Security recipients by readjusting the formula. The worst part is that Republicans are telling us they are not cutting, they are simply slowing the growth.

They can call it what they want, but if someone is 65 in 1998 and they do not have Medicare, that is a cut. This bill is a cut for that person who is now 62 and needs Medicare 3 years from now, so it is a cut. I do not think we need to play with words. I think the Republican majority needs to be honest with the American people: that in order to balance the budget and pay for tax cuts for the rich they stand united in their effort to cut Medicare.

THE BOTTOM LINE WITH MEDICARE: FIX IT OR LOSE IT

(Mr. SAXTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAXTON. Mr. Speaker, for the last decade I have represented a district that has as many senior citizens in it as any other district save one or two in the country. I think it is totally unfair to our older Americans to pretend there is no problem with Medicare and try to say that the Republican Party is out to make cuts in Medicare to give the rich people a tax cut. It is simply not true.

Under our plan, Medicare increases from $4,700 a participant to over $6,000. As a matter of fact, it is $6,300 per participant. That is not a cut.

The bottom line with Medicare is, and their party needs to figure this out, fix it or lose it, because the President himself says it will be bankrupt in 7 years.

MEDICARE CUTS PROPOSED BY REPUBLICANS WILL RESULT IN FEWER SERVICES TO AMERICANS

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, let me point out that the Republicans are talking about saving and improving Medicare by cutting it. We just cannot believe that. If we talk about cuts to Medicare as well as Medicaid, it is going to have a direct impact on senior citizens, in the case of Medicare, and a direct impact on poor people with regard to Medicaid.

There are only certain choices that exist when Medicare is cut. First of all, we will have higher copayments. Seniors will have to pay more money out of their own pocket, or they will have increased deductibles before they get benefits. Again, they will have to pay out of their own pocket.

The other option is that the reimbursement rate to hospitals or doctors will go down. That means a lot of doctors or even hospitals will not accept Medicare patients. A lot of seniors in New Jersey now know they cannot find doctors who will accept Medicare or even Medicaid.

The other option is that the hospitals simply reduce the quality of services, or do not provide the services that they normally do because they are not getting the money through a reduced reimbursement rate. There is a direct impact on hospitals, on the provisions of how medical care and health care is provided to senior citizens. There is no way around that if we make the cuts that are being proposed by the Republicans.

CLEAN WATER LEGISLATION WILL HARM AMERICA'S WETLANDS, STORMWATER PERMITTING PROCESS, AND COASTAL WATERS

(Mr. BOEHLERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BOEHLERT. Mr. Speaker, today the House of Representatives will take up the most serious public health environmental legislation considered yet in this historic 104th Congress. The proponents of the measure have labeled it good environmental legislation. That is a violation of the truth in advertising law.

The fact of the matter is the legislation we will consider today would decimate our Nation's wetlands, would end the stormwater permitting process, would do serious damage to our coastal waters.

We have worked, those of us identified with the Saxton-Boehlert alternative, with the National Governors Association, with the Coastal States Organization, with public health groups, with environmental organizations all over the country, to say that we can be responsible in dealing with clean water in America.

Those who are concerned about this subject are urged to call their elected representatives to let them know that they want clean water, and the time for meaningful action is now.

COMMUNICATION FROM THE CHAIRMAN OF THE DEMOCRATIC CAUCUS

The SPEAKER pro tempore (Mr. WICKER) laid before the House the following communications from the Honorable VIC FAZIO, chairman of the Democratic Caucus:

DEMOCRATIC CAUCUS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 10, 1995.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to inform you that Representative Nathan Deal is no longer a member of the Democratic Caucus.

Sincerely,

VIC FAZIO,
Chairman.

VACATING ELECTION OF MEMBER TO CERTAIN STANDING COMMITTEES OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communications from the Honorable NEWT GINGRICH, Speaker of the House of Representatives:

THE SPEAKER,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 10, 1995.

Hon. DON YOUNG,
Chairman, Committee on Resources, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to advise you that Representative Nathan Deal's election to the Committee on Resources has been automatically vacated pursuant to clause 6(b) of rule X, effective today.

Sincerely,

NEWT GINGRICH.

THE SPEAKER,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 10, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to advise you that Representative Nathan Deal's election to the Committee on Transportation and Infrastructure has been automatically vacated pursuant to clause 6(b) of rule X, effective today.

Sincerely,

NEWT GINGRICH.

ELECTION OF MEMBER TO THE COMMITTEE ON COMMERCE

Mr. BOEHNER. Mr. Speaker, by direction of the Republican Conference, I offer a privileged resolution (H. Res. 143) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the following named Member be, and is hereby, elected to the Committee on Commerce of the House of Representatives: Representative Nathan Deal of Georgia.

The resolution was agreed to.

A motion to reconsider was laid on the table.

PERMISSION FOR CERTAIN COMMITTEES TO SIT TODAY DURING 5-MINUTE RULE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit today while the House is meeting in the Committee of the Whole House under the 5-minute rule:

The Committee on Agriculture; the Committee on Banking and Financial Services; the Committee on Commerce; the Committee on Economic and Educational Opportunities; the Committee on House Oversight; the Committee on International Relations; and the Committee on Resources.

It is my understanding that the minority has been consulted and that there is no objection to this request.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

THE GUN-FREE SCHOOL ZONES AMENDMENTS ACT OF 1995—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–72)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection referred to the Committee on the Judiciary and ordered to be printed:

To the Congress of the United States:

Today I am transmitting for your immediate consideration and passage the "Gun-Free School Zones Amendments Act of 1995." This Act will provide the jurisdictional element for the Gun-Free School Zones Act of 1990 required by the Supreme Court's recent decision in *United States* v. *Lopez*.

In a 5–4 decision, the Court in *Lopez* held that the Congress had exceeded its authority under the Commerce Clause by enacting the Gun-Free School Zones Act of 1990, codified at 18 U.S.C. 922(q). The Court found that this Act did not contain the jurisdictional element that would ensure that the firearms possession in question has the requisite nexus with interstate commerce.

In the wake of that decision, I directed Attorney General Reno to present to me an analysis of *Lopez* and to recommend a legislative solution to the problem identified by that decision. Her legislative recommendation is presented in this proposal.

The legislative proposal would amend the Gun-Free School Zones Act by adding the requirement that the Government prove that the firearm has "moved in or the possession of such firearm otherwise affects interstate or foreign commerce."

The addition of this jurisdictional element would limit the Act's "reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce," as the Court stated in *Lopez*, and thereby bring it within the Congress' Commerce Clause authority.

The Attorney General reported to me that this proposal would have little, if any, impact on the ability of prosecutors to charge this offense, for the vast majority of firearms have "moved in . . . commerce" before reaching their eventual possessor.

Furthermore, by also including the possibility of proving the offense by showing that the possession of the firearm "otherwise affects interstate or foreign commerce," this proposal would leave open the possibility of showing, under the facts of a particular case, that although the firearm itself may not have "moved in . . . interstate or foreign commerce," its possession nonetheless has a sufficient nexus to commerce.

The Attorney General has advised that this proposal does not require the Government to prove that a defendant had knowledge that the firearm "has moved in or the possession of such firearm otherwise affects interstate or foreign commerce." The defendant must know only that he or she possesses the firearm.

I am committed to doing everything in my power to make schools places where young people can be secure, where they can learn, and where parents can be confident that discipline is enforced.

I pledge that the Administration will do our part to help make our schools safe and the neighborhoods around them safe. We are prepared to work immediately with the Congress to enact this legislation. I urge the prompt and favorable consideration of this legislative proposal by the Congress.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

NOTICE OF CONTINUATION OF EMERGENCY WITH RESPECT TO THE FEDERAL REPUBLIC OF YUGOSLAVIA BEYOND MAY 30, 1995—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 104–73)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the emergency declared with respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), as expanded to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control within the Republic of Bosnia and Herzegovina, is to continue in effect beyond May 30, 1995.

The circumstances that led to the declaration on May 30, 1992, of a national emergency have not been resolved. The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) continues to support groups seizing and attempting to seize territory in the Republics of Croatia and Bosnia and Herzegovina by force and violence. In addition, on October 25, 1994, I expanded the scope of the national emergency to address the actions and policies of the Bosnian Serb forces and the authorities in the territory that they control, including their refusal to accept the proposed territorial settlement of the conflict in the Republic of Bosnia and Herzegovina. The actions and policies of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Bosnian Serb forces and the authorities in the territory that they control pose a continuing unusual and extraordinary threat to the national security, foreign policy interests, and the economy of the United States. For these reasons, I have determined that it is necessary to maintain in force the broad authorities necessary to apply economic pressure to the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and to the Bosnian Serb forces and the authorities in the territory that they control to reduce their ability to support the continuing civil strife in the former Yugoslavia.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *May 10, 1995.*

PROVIDING FOR CONSIDERATION OF H.R. 961, CLEAN WATER AMENDMENTS OF 1995

Mr. QUILLEN. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 140 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 140

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the

House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 961) to amend the Federal Water Pollution Control Act. The first reading of the bill shall be dispensed with. Points of order against consideration of the bill for failure to comply with section 302(f) of the Congressional Budget Act of 1974 are waived. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on Transportation and Infrastructure now printed in the bill. The committee amendment in the nature of a substitute shall be considered by title rather than by section. The first three sections and each title of the committee amendment in the nature of a substitute shall be considered as read. Points of order against the committee amendment in the nature of a substitute for failure to comply with clause 7 of rule XVI or clause 5(a) of rule XXI or section 302(f) of the Congressional Budget Act of 1974 are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. Before consideration of any other amendment it shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution. That amendment may be offered only by a Member designated in the report, may amend portions of the bill not yet read for amendment, shall be considered as read, shall be debatable for ten minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. If that amendment is adopted, then the committee amendment in the nature of a substitute as so amended shall be considered as original text for the purpose of further amendment. At the conclusion of consideration of the bill for amendment for the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on an amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Tennessee [Mr. QUILLEN] is recognized for 1 hour.

Mr. QUILLEN. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentleman from California [Mr. BEILENSON], pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for purposes of debate only.

Mr. Speaker, House Resolution 140 is an open rule providing for the consideration of H.R. 961, the Clean Water Amendments of 1995. The rule provides 2 hours of general debate divided equally between the chairman and ranking minority member of the Committee on Transportation and Infrastructure. The rule waives section 302(f) of the Budget Act, prohibiting new budget authority in excess of the committee's section 602(b) allocation, against consideration of the bill.

The rule also makes in order the committee amendment in the nature of a substitute as original text for amendment purposes, which shall be read by title rather than section for amendment, with each title considered as read. The rule provides the following waivers against the amendment in the nature of a substitute: waives clause 7 of rule XVI pertaining to germaneness; clause 5(a) of rule XXI, prohibiting appropriations in a legislative bill, and section 302(f) of the Budget Act.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in the report of the Committee on Rules accompanying this resolution. This is an en bloc amendment addressing concerns of other committees of jurisdiction and makes technical amendments. This amendment may be offered only by Mr. SHUSTER or his designee, may amend portions of the bill not yet read for amendment, shall be considered as read, shall be debatable for 10 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Transportation and Infrastructure, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. If that amendment is adopted, then the committee amendment in the nature of a substitute as so amended shall be considered as original text for the purpose of further amendment.

Mr. Speaker, I would like to point out that the Transportation and Infrastructure Committee furnished the Rules Committee with a list of waivers required and specified the provisions requiring such waivers. Therefore, I do not object to the waivers provided in this rule.

Under this rule, the Chair may accord priority in recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD. Finally, the rule provides one motion to recommit, with or without instructions.

Mr. Speaker, the Clean Water Act has not been amended comprehensively since 1987, and I strongly support this bill. I'm particularly pleased to see that the bill takes giant steps toward relieving the enormous burdens placed on the States, on business and industry and agriculture, and on individuals by outrageous and unnecessary Federal regulations. The Clean Water Act has done a good job in getting Federal, State, and local governments and private industry to work together to provide our Nation with clean, healthy water. But the Clean Water Act has not been without controversy, and this bill before us today provides an important balance between environmental protection and private property rights. It provides much needed clarification of wetlands issues and requires risk assessment and cost benefit analysis for any new clean water regulations. Perhaps most important, this bill provides flexibility to State and local governments in implementating regulations.

H.R. 961 has been strongly endorsed by almost all agricultural, business, and industry organizations, and this widespread support is a clear indication that a great deal of cooperation, dedication, and common sense went into the development of this important legislation. I commend the members of the Transportation and Infrastructure Committee for their hard work.

This open rule will allow Members to offer any relevant amendments to address their particular concerns, and I urge adoption of the rule.

Mr. Speaker, I include for the RECORD the following material comparing open and closed rules in the 103d and 104th Congresses:

THE AMENDMENT PROCESS UNDER SPECIAL RULES REPORTED BY THE RULES COMMITTEE,[1] 103D CONGRESS V. 104TH CONGRESS

[As of May 9, 1995]

Rule type	103d Congress		104th Congress	
	Number of rules	Percent of total	Number of rules	Percent of total
Open/Modified-open [2]	46	44	24	75
Modified Closed [3]	49	47	8	25
Closed [4]	9	9	0	0
Totals:	104	100	32	100

[1] This table applies only to rules which provide for the original consideration of bills, joint resolutions or budget resolutions and which provide for an amendment process. It does not apply to special rules which only waive points of order against appropriations bills which are already privileged and are considered under an open amendment process under House rules.

[2] An open rule is one under which any Member may offer a germane amendment under the five-minute rule. A modified open rule is one under which any Member may offer a germane amendment under the five-minute rule subject only to an overall time limit on the amendment process and/or a requirement that the amendment be preprinted in the Congressional Record.

[3] A modified closed rule is one under which the Rules Committee limits the amendments that may be offered only to those amendments designated in the special rule or the Rules Committee report to accompany it, or which preclude amendments to a particular portion of a bill, even though the rest of the bill may be completely open to amendment.

[4] A closed rule is one under which no amendments may be offered (other than amendments recommended by the committee in reporting the bill).

SPECIAL RULES REPORTED BY THE RULES COMMITTEE, 104TH CONGRESS

[As of May 9, 1995]

H. Res. No. (Date rept.)	Rule type	Bill No.	Subject	Disposition of rule
H. Res. 38 (1/18/95)	O	H.R. 5	Unfunded Mandate Reform	A: 350–71 (1/19/95).
H. Res. 44 (1/24/95)	MC	H. Con. Res. 17	Social Security	A: 255–172 (1/25/95).
		H.J. Res. 1	Balanced Budget Amdt	
H. Res. 51 (1/31/95)	O	H.R. 101	Land Transfer, Taos Pueblo Indians	A: voice vote (2/1/95).
H. Res. 52 (1/31/95)	O	H.R. 400	Land Exchange, Arctic Nat'l. Park and Preserve	A: voice vote (2/1/95).
H. Res. 53 (1/31/95)	O	H.R. 440	Land Conveyance, Butte County, Calif	A: voice vote (2/1/95).
H. Res. 55 (2/1/95)	O	H.R. 2	Line Item Veto	A: voice vote (2/2/95).
H. Res. 60 (2/6/95)	O	H.R. 665	Victim Restitution	A: voice vote (2/7/95).
H. Res. 61 (2/6/95)	O	H.R. 666	Exclusionary Rule Reform	A: voice vote (2/7/95).
H. Res. 63 (2/8/95)	MO	H.R. 667	Violent Criminal Incarceration	A: voice vote (2/9/95).
H. Res. 69 (2/9/95)	O	H.R. 668	Criminal Alien Deportation	A: voice vote (2/10/95).
H. Res. 79 (2/10/95)	MO	H.R. 728	Law Enforcement Block Grants	A: voice vote (2/10/95).
H. Res. 83 (2/13/95)	MO	H.R. 7	National Security Revitalization	PQ: 229–100; A: 227–127 (2/15/95).
H. Res. 88 (2/16/95)	MC	H.R. 831	Health Insurance Deductibility	PQ: 230–191; A: 229–188 (2/21/95).
H. Res. 91 (2/21/95)	O	H.R. 830	Paperwork Reduction Act	A: v.v. (2/22/95).
H. Res. 92 (2/21/95)	MC	H.R. 889	Defense Supplemental	A: 282–144 (2/22/95).
H. Res. 93 (2/22/95)	MO	H.R. 450	Regulatory Transition Act	A: 252–175 (2/23/95).
H. Res. 96 (2/24/95)	MO	H.R. 1022	Risk Assessment	A: 253–165 (2/27/95).
H. Res. 100 (2/27/95)	O	H.R. 926	Regulatory Reform and Relief Act	A: voice vote (2/28/95).
H. Res. 101 (2/28/95)	MO	H.R. 925	Private Property Protection Act	A: 271–151 (3/1/95)
H. Res. 104 (3/3/95)	MO	H.R. 988	Attorney Accountability Act	A: voice vote (3/6/95)
H. Res. 103 (3/3/95)	MO	H.R. 1058	Securities Litigation Reform	
H. Res. 105 (3/6/95)	MO			A: 257–155 (3/7/95)
H. Res. 108 (3/7/95)	Debate	H.R. 956	Product Liability Reform	A: voice vote (3/8/95)
H. Res. 109 (3/8/95)	MC			PQ: 234–191 A: 247–181 (3/9/95)
H. Res. 115 (3/14/95)	MO	H.R. 1158	Making Emergency Supp. Approps.	A: 242–190 (3/15/95)
H. Res. 116 (3/15/95)	MC	H.J. Res. 73	Term Limits Const. Amdt	A: voice vote (3/28/95)
H. Res. 117 (3/16/95)	Debate	H.R. 4	Personal Responsibility Act of 1995	A: voice vote (3/21/95)
H. Res. 119 (3/21/95)	MC			A: 217–211 (3/22/95)
H. Res. 125 (4/3/95)	O	H.R. 1271	Family Privacy Protection Act	A: 423–1 (4/4/95)
H. Res. 126 (4/3/95)	O	H.R. 660	Older Persons Housing Act	
H. Res. 128 (4/4/95)	MC	H.R. 1215	Contract With America Tax Relief Act of 1995	A: 228–204 (4/5/95)
H. Res. 130 (4/5/95)	MC	H.R. 483	Medicare Select Expansion	A: 253–172 (4/6/95)
H. Res. 136 (5/1/95)	O	H.R. 655	Hydrogen Future Act of 1995	A: voice vote (5/2/95)
H. Res. 139 (5/3/95)	O	H.R. 1361	Coast Guard Auth. FY 1996	A: voice vote (5/9/95)
H. Res. 140 (5/9/95)	O	H.R. 961	Clean Water Amendments	

Codes: O-open rule; MO-modified open rule; MC-modified closed rule; C-closed rule; A-adoption vote; PQ-previous question vote. Source: Notices of Action Taken, Committee on Rules, 104th Congress.

□ 1200

Mr. Speaker, I reserve the balance of my time.

Mr. BEILENSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we support this open rule for H.R. 961, the clean water amendments of 1995, which makes major and substantial changes in current requirements for controlling water pollution and protecting wetlands.

Fortunately, the majority on the Committee on Rules did not accede to a request from the chairman of the Committee on Transportation and Infrastructure that a time limit be place don the amendment process. This is an enormously controversial bill that would in the view of many of us reverse many of the gains in water quality that have been achieved by what is probably our most successful environmental law, and Members should not be shut out by an arbitrary time limit.

As the gentleman from Tennessee has explained, the rule does contain several waivers. We are told that the waiver of the Budget Act prohibition against legislation containing new budget authority in excess of the committee's 602(b) budget allocation is necessary because of the provision in the bill that waives the Federal Government's sovereign immunity under the Clean Water Act.

We would point out to Members that the Congressional Budget Office was unable to provide estimates for the cost of this provision that is being protected, but it did report that the cost "could be significant."

Mr. Speaker, the Committee on Rules heard criticism yesterday about the process of the Committee on Transportation and Infrastructure in considering this bill. Many of us are concerned that some of the most controversial provisions of H.R. 961 did not receive adequate attention in the hearings that preceded markup of the bill. The provisions in question are those that provide waivers, loopholes, and rollbacks of existing Clean Water Act provisions relating to major dischargers of pollution in our waters.

We are concerned that the public did not have the opportunity to comment on the new provisions in the bill that were added late in the process and which would weaken or revoke many of the basic features of the Clean Water Act that have made it so successful over the years.

We are concerned, too, about widespread reports that those provisions of H.R. 961 were written in large part by lobbyists representing industries that are major polluters. Several agencies, including the EPA and the Department of Justice, have protested that they did not have the opportunity to comment in a timely manner on these new and very damaging provisions.

This open rule will give us the opportunity to discuss and emphasize some of those changes and ensure that the public has a greater awareness of their impact on the quality of our Nation's water supply.

Mr. Speaker, we will agree that there are reasonable changes that should be made in the Clean Water Act. Its requirements should be as rational, efficient, and cost effective as possible.

Complying with its regulations should not be more expensive or more burdensome than is necessary for the municipalities, industries, and private landowners affected by the provisions of the act.

Unfortunately, the bill before us would have widespread and serious consequences for the quality of the Nation's water supply. It would make legitimate regulation much more difficult, in many cases impossible.

Interestingly, many of its provisions—including the new classification system and compensation program for wetlands—would set up cumbersome and costly procedures that are likely to require more Federal employees and agency costs at a time when we are trying to downsize the Federal bureaucracy, or the agencies in charge will simply have to decide not to effectively enforce the law.

And, as CBO reported, the cost of the compensation program for landowners of wetlands is impossible to estimate, but it is a program that could dramatically increase costs to the taxpayers. There are preliminary estimates that indicate that the effect of the bill would be to increase the deficit by several billion dollars during fiscal years 1995–98.

The Clean Water Act has been one of our most successful environmental

laws and one of the most popular ones with individual citizens, a great majority of whom would prefer to see the act strengthened, and not weakened as H.R. 961 would do. This is legislation that threatens to overturn very important health protections that citizens have under the law as it is currently written.

The bill in its present form is likely to invite massive amounts of new litigation that ignores scientific information, most notably in making major changes in wetlands regulation without the benefit of a congressionally-mandated study on wetlands that was released just yesterday and which, and I quote from the article in the New York Times discussing it, "repudiates the basic approach taken by the bill," mainly because it found that the cost-benefit analysis requirements in the bill are inflexible and unrealistic.

The bill has many other objectionable features including those that reduce water quality protection by undermining the strong national standards that have produced significant water quality improvements in the last 20 years. It seeks to repeal regulations that protect city water from pollution runoff.

It eases Federal protections for industrial polluters, and allows development of protected wetlands that are critical to our Nation's water supply. In fact it would redefine wetlands in such a way that well over half of the Nation's wetlands, including parts of the Everglades, would be removed from protection.

Mr. Speaker, one would think from reading this bill that we have gone too far or certainly far enough in attempting to clean up our Nation's waters. In fact, however, over 40 percent of our waters do not meet the standards for the uses designated under existing law.

Finally, Mr. Speaker, the administration strongly opposes the bill because, in its words, it threatens to undermine achievement in cleaning up the Nation's waters and would significantly delay progress in addressing remaining water pollution problems.

Among its most objectionable provisions, the bill would reduce water quality protection, eliminate fundamental wetlands protections, create enormous new costs, fail to address effectively non-point source pollution, and finally would paralyze the Federal Government's ability to issue regulations and guidance to protect the Nation's waters.

Fortunately as we have discussed, as the gentleman from Tennessee told us at the outset, this is an open rule, so we will have the opportunity to try to change many of the most worrisome features of the bill. We hope that amendments strengthening the act, or at least returning it to its existing state, are approved.

Again, Mr. Speaker, we support the rule for H.R. 961. We urge its approval so that we may proceed with consideration of this legislation today.

Mr. Speaker, I include the following for the RECORD.

Floor Procedure in the 104th Congress; Compiled by the Rules Committee Democrats

Bill No.	Title	Resolution No.	Process used for floor consideration	Amendments in order
H.R. 1*	Compliance	H. Res. 6	Closed	None.
H. Res. 6	Opening Day Rules Package	H. Res. 5	Closed; contained a closed rule on H.R. 1 within the closed rule	None.
H.R. 5*	Unfunded Mandates	H. Res. 38	Restrictive; Motion adopted over Democratic objection in the Committee of the Whole to limit debate on section 4; Pre-printing gets preference.	N/A.
H.J. Res. 2*	Balanced Budget	H. Res. 44	Restrictive; only certain substitutes	2R; 4D.
H. Res. 43	Committee Hearings Scheduling	H. Res. 43 (OJ)	Restrictive; considered in House no amendments	N/A.
H.R. 2*	Line Item Veto	H. Res. 55	Open; Pre-printing gets preference	N/A.
H.R. 665*	Victim Restitution Act of 1995	H. Res. 61	Open; Pre-printing gets preference	N/A.
H.R. 666*	Exclusionary Rule Reform Act of 1995	H. Res. 60	Open; Pre-printing gets preference	N/A.
H.R. 667*	Violent Criminal Incarceration Act of 1995	H. Res. 63	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 668*	The Criminal Alien Deportation Improvement Act	H. Res. 69	Open; Pre-printing gets preference; Contains self-executing provision	N/A.
H.R. 728*	Local Government Law Enforcement Block Grants	H. Res. 79	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 7*	National Security Revitalization Act	H. Res. 83	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 729*	Death Penalty/Habeas	N/A	Restrictive; brought up under UC with a 6 hr. time cap on amendments	N/A.
S. 2	Senate Compliance	N/A	Closed; Put on suspension calendar over Democratic objection	None.
H.R. 831	To Permanently Extend the Health Insurance Deduction for the Self-Employed.	H. Res. 88	Restrictive; makes in order only the Gibbons amendment; waives all points of order; Contains self-executing provision.	1D.
H.R. 830*	The Paperwork Reduction Act	H. Res. 91	Open	N/A.
H.R. 889	Emergency Supplemental/Rescinding Certain Budget Authority	H. Res. 92	Restrictive; makes in order only the Obey substitute	1D.
H.R. 450*	Regulatory Moratorium	H. Res. 93	Restrictive; 10 hr. Time Cap on amendments; Pre-printing gets preference	N/A.
H.R. 1022*	Risk Assessment	H. Res. 96	Restrictive; 10 hr. Time Cap on amendments	N/A.
H.R. 926*	Regulatory Flexibility	H. Res. 100	Open	N/A.
H.R. 925*	Private Property Protection Act	H. Res. 101	Restrictive; 12 hr. time cap on amendments; Requires Members to pre-print their amendments in the Record prior to the bill's consideration for amendment, waives germaneness and budget act points of order as well as points of order concerning appropriating on a legislative bill against the committee substitute used as base text.	1D.
H.R. 1058*	Securities Litigation Reform Act	H. Res. 105	Restrictive; 8 hr. time cap on amendments; Pre-printing gets preference; Makes in order the Wyden amendment and waives germaness against it.	1D.
H.R. 988*	The Attorney Accountability Act of 1995	H. Res. 104	Restrictive; 7 hr. time cap on amendments; Pre-printing gets preference	N/A.
H.R. 956*	Product Liability and Legal Reform Act	H. Res. 109	Restrictive; makes in order only 15 germane amendments and denies 64 germane amendments from being considered.	8D; 7R.
H.R. 1158	Making Emergency Supplemental Appropriations and Rescissions	H. Res. 115	Restrictive; Combines emergency H.R. 1158 & nonemergency 1159 and strikes the abortion provision; makes in order only pre-printed amendments that include offsets within the same chapter (deeper cuts in programs already cut); waives points of order against three amendments; waives cl 2 of rule XXI against the bill, cl 2, XXI and cl 7 of rule XVI against the substitute; waives cl 2(e) od rule XXI against the amendments in the Record; 10 hr time cap on amendments. 30 minutes debate on each amendment.	N/A.
H.J. Res. 73*	Term Limits	H. Res. 116	Restrictive; Makes in order only 4 amendments considered under a "Queen of the Hill" procedure and denies 21 germane amendments from being considered.	1D; 3R.
H.R. 4*	Welfare Reform	H. Res. 119	Restrictive; Makes in order only 31 perfecting amendments and two substitutes; Denies 130 germane amendments from being considered; The substitutes are to be considered under a "Queen of the Hill" procedure; All points of order are waived against the amendments..	5D; 26R.
H.R. 1271*	Family Privacy Act	H. Res. 125	Open	N/A.
H.R. 660*	Housing for Older Persons Act	H. Res. 126	Open	N/A.
H.R. 1215*	The Contract With America Tax Relief Act of 1995	H. Res. 129	Restrictive; Self Executes language that makes tax cuts contingent on the adoption of a balanced budget plan and strikes section 3006. Makes in order only one substitute. Waives all points of order against the bill, substitute made in order as original text and Gephardt substitute..	1D.
H.R. 483	Medicare Select Extension	H. Res. 130	Restrictive; waives cl 2(1)(6) of rule XI against the bill; makes H.R. 1391 in order as original text; makes in order only the Dingell substitute; allows Commerce Committee to file a report on the bill at any time..	1D.
H.R. 655	Hydrogen Future Act	H. Res 136	Open	N/A.
H.R. 1361	Coast Guard Authorization	H. Res 139	Open; waives sections 302(f) and 308(a) of the Congressional Budget Act against the bill's consideration and the committee substitute; waives cl 5(a) of rule XXI against the committee substitute.	N/A.
H.R. 961	Clean Water Act	H. Res 140	Open; pre-printing gets preference; waives sections 302(f) and 602(b) of the Budget Act against the bill's consideration; waives cl 7 of rule XVI, cl 5(a) of rule XXI and section 302(f) of the Budget Act against the committee substitute. Makes in order Shuster substitute as first order of business.	N/A.

*Contract Bills, 67% restrictive; 33% open. **All legislation, 68% restrictive; 32% open. ****Restrictive rules are those which limit the number of amendments which can be offered, and include so called modified open and modified closed rules as well as completely closed rules and rules providing for consideration in the House as opposed to the Committee of the Whole. This definition of restrictive rule is taken from the Republican chart of resolutions reported from the Rules Committee in the 103rd Congress. ****Not included in this chart are three bills which should have been placed on the Suspension Calendar. H.R. 101, H.R. 400, H.R. 440.

Mr. BEILENSON. Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Florida [Mr. GOSS], a very valuable member of the Committee on Rules.

Mr. GOSS. Mr. Speaker, I thank the distinguished gentleman from Tennessee [Mr. QUILLEN], the chairman emeritus, for yielding me this time.

Mr. Speaker, I rise in support of this open rule for the clean water amendments of 1995. The Clean Water Act is one our most important and far-reaching environmental laws, and the policies associated with it deserve a full hearing on the floor of this House.

I congratulate Chairman SHUSTER and Subcommittee Chairman BOEHLERT for their hard work in acting on this reauthorization in such a timely manner—it is a credit to them and the Transportation and Infrastructure Committee that we have this bill on the floor in early May.

Mr. Speaker, clean water is vital to everyone in America, but nowhere more so than in the State of Florida. We are literally surrounded by water—the Atlantic Ocean and the Gulf of Mexico. In southwest Florida, we have lakes, streams, and wetlands that are national treasures like the Everglades and Big Cypress—all of which are vital to our economy and our well-being. Thousands of new residents move to my district every year for the pristine beaches, the clear harbors, and the subtropical climate, providing tremendous economic growth. Each one of our major industries—tourism, fishing, and agriculture, depend on clean water and a healthy environment.

For years, the Clean Water Act has helped to remove pollution from many of America's lakes, rivers, and coastlines. It has aided in the preservation of our more pristine bodies of water. And yes, it has created some problems along the way. Wetlands protection, for instance, has become a regulatory nightmare for most ordinary citizens. Obtaining permits can take years, enforcement can be inconsistent, and local conditions are sometimes not considered. States and local governments have complained about rigid Federal mandates that are both costly and inefficient.

Improvements to the Clean Water Act can and should be made, and I look forward to addressing these issues in a full and open debate. I am especially pleased that this debate will include a substitute amendment offered by my friend, JIM SAXTON, from New Jersey.

The floor discussion on the fine points of these proposals will likely be determinant for the way many Members will vote. For instance, I will be seeking answers to questions like, will H.R. 961 replace one inefficient, unworkable wetlands bureaucracy with another? How will the classification criteria used by the Army Corps of Engineers relate to the just-released National Academy of Sciences Wetlands Report? Would it be better to address the problems associated with wetlands permitting by adopting the National Governor's Association proposal to do the work at the local level, with Federal oversight?

In addition, I will be interested in the debate over the coastal zone management provisions in H.R. 961; specifically, are we better off eliminating the nonpoint source pollution provisions from the CZMA, or do these just need some basic reforms? And if we do repeal section 1627 of the CZMA, are we providing enough coastal protection in other areas?

Finally, I am concerned about the takings language in H.R. 961 that would provide automatic compensation for any portion of a property that lost 20 percent of its value. Estimates from the Congressional Budget Office suggest that the cost to the Corps of Engineers of this provision alone could be $15 billion. The alternative could be to leave our most vital wetlands unprotected.

Mr. Speaker, I urge my colleagues to support this open rule.

Mr. BEILENSON. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. MINETA], the distinguished ranking member of the full committee.

Mr. MINETA. Mr. Speaker, I thank my colleague, the gentleman from California, for yielding me this time.

Mr. Speaker, I rise in support of this rule. It provides no limitations in terms of amendments, nor any limitation on the time available for amendments.

This is a very large and very complex bill with enormous consequences for people from all across America. It will determine how healthy or unhealthy their drinking water supply will be. It will determine whether the water that flows through their community is a blessing or a blight, and whether they need to try to keep their kids from swimming in it or fishing in it. It will determine whether they have enough clean water to be able to attract new businesses with new jobs.

This is a big bill. When it was introduced, it was 141 pages. Now it is 326 pages. This bill makes far-reaching changes in the Clean Water Act, one of the most important and successful basic protections that our citizen have.

□ 1215

This bill will reach into every community, every home and come out through every faucet in America. This is a bill which requires careful and thorough consideration. This is a bill where we cannot afford to make mistakes and we cannot afford to act in haste. It is therefore imperative that this rule does not limit amendments or amendment time. Whatever concerns Members have, we need to hear from them. We need to consider them. We need to correct them if they need correcting, and for the same reasons it is important to hear all points of view in general debate.

We have Democrats who oppose the bill, and Democrats who support the bill. We have Republicans who oppose the bill, and we have Republicans who support the bill. All have different concerns and issues that they wish to air, and all should be given that opportunity.

The rule contributes to that goal by providing extra general debate time, 2 hours to be equally divided. But that still leaves open the question of distributing that time is a way which is fair to all points of views and allows all points of view to be heard.

I, for my part, have committed that I will yield 15 minutes of my time to Democrats who are in favor of the bill; namely in opposition to the position I take. And my suggestion yesterday at the Committee on Rules was that 15 minutes of the majority time should be set aside for Republicans who are in opposition to the bill. In that way both parties and both opponents and proponents would have equal time. To do otherwise would bar some points of view from being expressed on the floor, and would artificially skew the debate by providing more time for proponents than for opponents, which would be clearly an attempt to bias the debate.

I assume that no one here is afraid of anyone else's arguments, and so if I might I would like to ask either the gentleman from Tennessee, or my very fine chairman from Pennsylvania, as to whether or not Republicans who oppose the bill will have time from the majority side, something on the other of let us say 15 minutes, as I have given to the gentleman from Louisiana [Mr. HAYES] to express their view on the bill.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I am more than happy to yield to my friend, the gentleman from Pennsylvania.

Mr. SHUSTER. I am pleased to respond to the gentleman that the Republican leadership has agreed to give 15 minutes to the Democratic proponents of the bill, and so I of course will accede to that request. There were no requests at the Committee on Rules yesterday formally submitted at the time we met. It would be my intention to give as much time as I possibly could to all points of view.

However, because of the previous commitment that had been made by the Republican leadership to those Democrats who support the bill, I am constrained to honor that commitment, but I would point out that I understand there is a substitute which the gentleman from New York [Mr.

BOEHLERT] and the gentleman from New Jersey [Mr. SAXTON] have which will be offered and under the rule there will be unlimited debate made available on that.

So, it certainly would not be my intention at this time to attempt to limit or constrain their time on their substitute at all.

Mr. MINETA. If I might reclaim my time, Mr. Speaker, as I understand it then under the arrangement then the gentleman from Pennsylvania [Mr. SHUSTER] will have 45 minutes of general debate time under his control, I will have 45 minutes of debate time under my control, and the gentleman from Louisiana [Mr. HAYES] will then have a half hour, is that correct?

Mr. SHUSTER. That is my understanding as to what the agreement was that I am simply carrying out.

Mr. MINETA. And that opponents of the bill that will be on the floor, then, will be accorded their time only when they present their substitute rather than under general debate time under H.R. 961.

Mr. SHUSTER. If I have the time I will be happy to yield to them, but since I do not know whether I am going to have any time, I cannot commit a block of time, because that block of time previously had been committed by the Republican leadership. Of course, the gentleman from California is certainly free to yield whatever time he wants to the opponents of the bill.

Mr. MINETA. Absolutely. I am going to be yielding my time to do that.

I appreciate the gentleman from California giving me the time.

Mr. BEILENSON. Mr. Speaker, I reserve the balance of my time.

Mr. QUILLEN. Mr. Speaker, I yield 2 additional minutes to the gentleman from Pennsylvania [Mr. SHUSTER]

Mr. SHUSTER. Mr. Speaker, I simply take this time to announce to the body that it is our intention to finish this bill by 1 p.m. Friday afternoon. In consultation with the leadership, I am informed that we might go tonight until between 9:30 and 10, that we will go tomorrow night as long as is necessary, so that we can finish this bill by 1 p.m.

I am pleased that we have an open rule; I am pleased that we have no time limits. If it appears that it is being dragged out, or there might be dilatory tactics, which I certainly do not anticipate, but should there be such tactics to delay or to get to go to final passage, then I of course reserve the right to move to put time limits on the debate.

I hope that we do not have to do that. It is not my intention, but it is indeed our intention to complete this bill and have final passage by 1 p.m. Friday afternoon.

Mr. BEILENSON. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Pennsylvania [Mr. BORSKI], the ranking member of the subcommittee.

Mr. BORSKI. I want to thank the gentleman for yielding me this time.

Mr. Speaker, I wish to express my support for the rule and my strong opposition to H.R. 961, an industry-written bill filled with loopholes and waivers to roll back the Clean Water Act.

H.R. 961 will do tremendous damage to our Nation's environment, the water quality of our rivers, lakes, and streams, and will threaten the health of the American public.

This bill has been rushed through the process with no time for adequate consideration.

At no time was the Democratic leadership of the Transportation and Infrastructure Committee ever consulted about the drafting of this bill.

The Environmental Protection Agency and the environmental community were totally excluded from the process.

H.R. 961 is an industry wish-list drafted by secret industry task forces that has had no hearings and the barest minimum of consideration in the committee.

The 326-page industry wish-list was unveiled for the first time on March 22. One week later, we went to subcommittee markup.

Less than 1 week after that markup began in full committee. These were markups that were scheduled over the objections of the Democratic leadership.

In only 15 days, we moved from seeing a 326-page bill for the first time, through subcommittee and full committee markups.

That would be impressive for a noncontroversial bill—but this bill is very controversial.

The result of that one-sided and exclusive process—a process that is totally unprecedented in our committee—is a bill that will completely gut the Clean Water Act.

H.R. 961 will roll back 20 years of environmental protection that has cleaned up many of our Nation's rivers, lakes, and streams.

Before 1972, the rivers in many cities were no more than open sewers. Some even caught fire.

We must not turn back the clock on environmental protection.

H.R. 961 would pit State against State, city against city, in the race to save money and attract industry by relaxing environmental standards.

It would do virtually nothing to attack the major remaining source of water pollution—non-point source runoff from rural and urban areas. In fact, it would eliminate the Coastal Zone Non-Point Control Act—the one effective program we have for managing non-point pollution.

In the last 10 years, there have been more than 100 outbreaks of waterborne disease. In Milwaukee polluted runoff in drinking water resulted in 400,000 illnesses and more than 100 deaths.

H.R. 961 would remove protection from 60 to 80 percent of our Nation's wetlands.

It would leave parts of such valuable areas as the Florida Everglades, the Great Dismal Swamp and large portions of the New Jersey shore unprotected.

Mr. Speaker, this bill should be defeated. The Transportation and Infrastructure Committee should start over on a bill that will make the reforms that are truly needed in the Clean Water Act but will maintain protection of the environment.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New York [Mr. BOEHLERT], who is chairman of the Subcommittee on Water Resources and Environment.

Mr. BOEHLERT. Mr. Speaker, I support the rule we will vote on this morning. I am proud that the people's House will bring this landmark legislation up for debate under an open rule that allows for maximum debate.

I think it is a sign of the maturity and confidence of the new majority that we are willing to air our disagreements over major legislation. Competing ideas are not just permitted, but encouraged to percolate to the top, where we will have full and open debate.

Let me also say that I believe the committee's hearing process was open as well. As Chairman of the subcommittee of jurisdiction, the Subcommittee on Water Resources and the Environment, I presided over six major hearings in Washington, and one field hearing in upstate New York, that one dealing exclusively with the subject of nonpoint source pollution.

The process was open, and I applaud that. I voted for the bill out of subcommittee to report it to the full committee despite the fact that I had major objections, but I feel that the day has long since gone when one person in the House can deny all of the others the opportunity to consider major legislation.

I voted for that bill to come out of the subcommittee to the full committee, but I could not in good conscience vote for that bill in the full committee, and let me tell Members why.

First of all, a 334-page bill was filed last Thursday. For most Members, the first opportunity that they had to be exposed to the extensive material on this complex legislation was yesterday when we returned to the Nation's Capital, and today we are debating the legislation.

This legislation will remove over 60 percent of our Nation's wetlands from any level of protection, and allow the destruction of maybe 80 percent of the Nation's wetlands. Just yesterday the National Academy of Sciences issued a report, and in effect at the briefing these preeminent scientists said there is no scientific basis for the wetlands provision in the committee bill. We have to deal with good science.

We have gone, those of us who are proposing an alternative, my colleagues Congressman SAXTON of New Jersey and Congressman ROEMER of Indiana, we have gone with an extensive outreach program with the National Governors Association and we have listened. That is what we are supposed to do in Washington, listen, and we have embraced the National Governors Association section of our bill dealing with wetlands.

The bill, the committee bill, repeals the coastal zone nonpoint source pollution control problem, a very serious mistake with very serious consequences, so we reached out. We went to the coastal zone organization, comprised of 30 States, their Governors, their key environment and public safety people, and we have embraced, adopted their provision to deal with the Coastal Zone Reauthorization Act amendments.

The bill repeals entirely the storm water permitting process. We think that is a big mistake. We recognize problems for smaller communities and smaller businesses, so we have put into our alternative a 10-year moratorium that would exempt communities of less than 100,000 or smaller industries. We have tried to be responsive.

Time after time, poll after poll, the people of America said they want us to do something meaningful about clean water. There is not one person in this House, not one person in America, who would hesitate in this richest, most technologically advanced nation to go to a water fountain in any city to quench their thirst, but they did that in Milwaukee and 104 people died in 1993; 400,000 were made ill.

□ 1230

Four hundred thousand were made ill, and that is just the most recent, the flagrant example of how the public health is in jeopardy if we do not do a better job with our Nation's clean water program.

My colleagues in the House, the people across America, I urge you to give very careful consideration to the alternative that will be offered by the gentleman from New Jersey [Mr. SAXTON], myself, and the gentleman from Indiana [Mr. ROEMER].

Clean water should be an American birthright.

Mr. BEILENSON. Mr. Speaker, I yield 4 minutes to the gentleman from New Mexico [Mr. RICHARDSON].

Mr. RICHARDSON. Mr. Speaker, I rise in support of the rule and against this bill. This bill guts one of our strongest environmental statutes, the Clean Water Act. This bill is a bonanza for special interests and polluters. They are probably jumping for joy over this bill.

They are doing so because they probably wrote it and, in fact, a better title for this bill should be "The Dirty Water Act of 1995" or "The Polluters' Bill of Rights of 1995."

Mr. Speaker, what we have here is a dirty water bill which would significantly weaken laws, affecting protection of wetlands, enforcement of water quality standards, regulation of storm water runoff and a number of other sewage standards relaxed much too much. In effect, this legislation would leave 50 to 70 percent of our Nation's most valuable wetlands unprotected. It would delete controls on the discharge of more than 70,000 chemicals which are now regulated by the act, 70,000 chemicals no longer regulated by the act. It would allow waivers for more than two dozen cities to discharge sewage into the ocean. It would ignore the impact of pollution from runoff, which is the No. 1 source of pollution in our Nation's surface waters.

And here is a statement by the administration: "For these reasons, if H.R. 961 were presented to the President in its current form, the Administrator of EPA, the Secretary of the Interior, the Director of OMB, and the Attorney General would recommend that the bill be vetoed." Again, this bill reduces water quality protection.

We should support pollution prevention and flexible tailored cost approaches to meeting the goals of the act, but this bill would undermine the strong standards that have produced significant water quality improvements in the last 20 years.

On wetlands, wetlands are critical to our Nation's water supply by functioning as natural filters which improve water quality and mitigate potential disastrous flooding plus protecting a number of species. This bill would redefine wetlands and remove even the Everglades—as I said, over 70 percent of all wetlands.

Now, costs are created by this bill. We should all support private property rights, but the takings provision in this bill would dramatically increase costs to the taxpayer of protecting our vital wetlands.

The bill fails to address nonpoint source pollution. Nonpoint source pollution is the major water quality problem currently facing the country. It paralyzes the Federal Government's ability to issue regulations and guidance to protect the Nation's water.

The administration believes that cost-benefit analysis can and should influence environmental decisions and that regulations should be adopted upon a reasoned determination that the benefits of the regulation would justify its cost, but this bill would impose overly broad and judicially reviewable risk assessment and cost-benefit requirements prior to the issuance of such rules.

And most importantly, if you look at pay-as-you-go scoring, H.R. 961 would affect direct spending. Therefore, it would be subject to the pay-as-you-go provisions of the Omnibus Budget Reconciliation Act of 1990, and minimum estimates indicate that the effect of the bill would be to increase the deficit by several billion dollars during fiscal years 1995 and 1998.

Mr. Speaker, this is a bad bill. It should be rejected. We should start over and do this carefully. We must reauthorize the Clean Water Act, but not with this.

Mr. QUILLEN. Mr. Speaker, I yield 5 minutes to the distinguished gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Speaker, I thank the gentleman from Tennessee for yielding me this time.

Let me just say at the outset that I want to thank the gentleman from Pennsylvania [Mr. SHUSTER] and the Republican leadership for giving us the opportunity to debate this very important matter under an open rule, giving us the opportunity to bring our points forward as the gentleman from New York [Mr. BOEHLERT] and I will do in a substitute a little later on. I called the Speaker on Friday and I expressed my concerns about this bill from a New Jersey coastal perspective. The Speaker, without hesitation, said "You get together what you think is good for New Jersey in the way of a substitute or in the way of however you want to propose your amendments, and you bring them to floor, and we will have an open rule." And I appreciate that. I also appreciate the cooperation by the gentleman from Pennsylvania [Mr. SHUSTER] and members of the Committee on Rules in this regard. It truly is an opportunity for us to debate before the American people some issues that I think are of great importance.

I have now been in this House for a decade, and when I was elected to the House and became a member of the Committee on Merchant Marine and Fisheries, soon to be joined by the gentleman from New Jersey [Mr. PALLONE], already in place was Mr. Hughes from New Jersey, we were there because we had great concerns, concerns about water quality particularly in the coastal areas of our State.

I think the same concerns exist in many coastal States, but perhaps they were emphasized in New Jersey because of our density of population. Perhaps they were emphasized because of our proximity to the largest city on our coast in the country, New York City, of course.

We began to look at some of the problems caused by that in the Northeast, Long Island, New England, and along the New Jersey coast; we began on a bipartisan basis, without consideration for politics, in my opinion, in any partisan form, to put together programs that were intended to create a much better condition for inhabitants and visitors to those coastal areas. We had massive beach closings in the summers of 1987 and 1988 in New York and

New Jersey and other coastal States. We had flooding in many areas of our country, both inland areas as well as coastal areas, and that has to do very much with this bill.

We identified sources of pollution that were relatively easy to take care of; namely, point sources of pollution, and we also recognized that there is another category of pollution known as nonpoint sources of pollution that are much more difficult to deal with, and we put in place national policy sometimes tailored specifically to States through the Coastal Zone Management Act, and that process to take care of many of these programs and to take care of many of these issues and problems as well.

I must say together, as Republicans and Democrats, we have been very, very successful. As a matter of fact, just the day before yesterday, an airplane pilot friend of mine who has been flying over the eastern coast for many years said to us, "One of the things you have done right," he said, "and I know this from my observations of flying over these areas and viewing the habitat and the environment, particularly the water, that you have done a good job in beginning to turn the corner on coastal pollution," and we have been able to do that.

Unfortunately, I take issue with many or some, at least, of the provisions of this bill relative to the treatment of wetlands and their importance in keeping the environmental quality what it should be in coastal areas, with the repeal of the CZMA section which has reference to nonpoint pollution, and that is why the Coastal States Association endorses the Saxton-Boehlert approach which we think is much more sensible, as well as the storm water discharge and the permitting process which is repealed by this act. All of these things are vitally important to the health and welfare and the environmental quality that affects the people's lives that inhabit and visit coastal areas.

One other issue of particular importance, I know it is of importance to the gentleman from New Jersey [Mr. PALLONE], as it to me, is the ocean dumping provisions of this bill that relate to dredge spoils being dumped offshore and the elimination of the involvement on a direct basis of the Environmental Protection Agency.

And so we will offer at the appropriate time a substitute which we hope we will get broad consensus on relative to these and a few other subjects. And so, Mr. Speaker, I thank you for the opportunity to express my support for the rule this morning and my appreciation for the leadership on our side and the Committee on Rules for permitting us to offer under an open rule changes in regard to these provisions.

Mr. BEILENSON. Mr. Speaker, I yield 5 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. Mr. Speaker, I thank the gentleman from California for yielding me this time.

I rise to say to Americans who believe that progress is preordained in this country, "Wake up." Because today we are going backward. Today we are on a real slippery slope, and for people who thought we would always be able to have clean water in America, that is one of the things we have been very proud of, you can turn on a tap, and rely on it. Guess what, today we are saying, "Well, no more. We just do not want to push the polluters, it costs them too much to deal with the pollution."

And so let me say in the next breath, for those who are looking for growth stocks today, I say buy bottled water stocks, because the real message is we do not want the polluters to have to clean up. We are going to have the people who use the water have to go buy bottled water or whatever in the future.

This is not the America or the Federal Government that I knew, and I must say I find it a very sad day. I do not even want to vote for the rule. Yes, it is open. I do not have any problem with the rule. The only problem is I do not think we should be dealing with this bill today, because the scientific evidence on this bill is not in.

Eighteen hours before we started debating this bill, the esteemed National Academy of Sciences released its report, 18 hours. Now, maybe everybody here is a little quicker than I am, but to absorb that and figure out how to deal with that and get it to the House floor in 18 hours is almost beyond, I think, most of our capability.

The Chair of that commission is William Lewis, a University of Colorado professor, and he and the others who drafted it were not complimentary at all of this bill. They said it was much too simplistic, and that it needed many, many pieces of work. They also were not particularly accepting of how the policy had gone on in the past. They came out with some long awaited changes of how we might be more efficient, how we might deal with some of the inconsistencies between different Federal agencies. To me, that is the issue I wish we had in front of us.

And I do not think this is the day that we have had time to get it done, so I fear that Americans are going to wake up and suddenly say, "What happened? Why didn't you tell us? Why didn't we know? We can't believe anybody undid this." Well, here we are, we are doing it, and I find it very sad.

As we talk about these issues, you know, people will talk about the wetlands, the wetlands, how very serious, there are too many wetlands, we do not need the wetlands.

Well, what do wetlands do? You know, wetlands are absolutely vital as a filter to filter out a lot of the pollutants, a lot of the pesticides, the sediment, the nitrogen that otherwise gets right into the water source and everything else. We cannot put concrete on and we cannot develop every inch of this planet, because the runoff and stuff needs to go somewhere. It needs to be filtered through some place, and the wetlands are a very essential part of that ecosystem.

When you also look at all the different contaminants being put in and the level of toxics that go into rivers that will be considered acceptable, well, let me tell you, if we are going to allow these to be in flux, if we are going to treat much more cavalierly the 70,000 different pollutants people have been talking about, that is going to get transferred to people, and in either having to buy bottled water or in higher health care costs, and more environmental damage to people's health, all sorts of things before you even get to the fallout on what happens to the wildlife.

We now know songbirds are dying in America at a much faster pace than we would like to see that happen. We do not know why. We were learning in this whole ecology debate that we are having more and more about how interconnected we have become and how important it is to take these things seriously.

But I would hope that this body would go on good science. I hope that we find out for people who support this bill long term when good science says this is not a good bill to support, I would hope that it is bad politics not to support good science.

You know, this has not been a flat Earth caucus. This has been a Nation that has been built on good science and relying on academics and relying on people who do not have a dog in the fight, and when the academics have spoken and when those who are really with no ax to bear have spoken, but they have spoken just 18 hours ago and they are warning this bill is going in the wrong direction, I hope we wake up and listen to that. I sincerely do.

I am very sorry that this day has come.

Mr. Speaker, H.R. 961 represents a fundamental change in the way we think about clean water. Unfortunately, the change is not a positive one.

Under current law, polluters do not have a right to dump messes into public resources; if they do, they pay a fine. In my district, for example, paying for the Sand Creek greenway was part of Conoco's penalty for discharging toxics into Sand Creek. Under H.R. 961, the outcome might be different. The cost benefit provisions in H.R. 961 essentially make polluting a legally acceptable use of water.

Currently, the level of toxic contamination in a river or lake that is considered acceptable is based on human health and ecological standards. The Shuster bill will change that standard. It incorporates the polluter's needs into the formula.

Wetlands would change too. For the most part they would disappear. Wetlands filter more than 90 percent of the pesticides, sediment, and nitrogen that would otherwise pollute our bodies of water. Wetlands are also vital to over 75 percent of our fish and shellfish. H.R. 961 eliminates wetlands protection by narrowly defining a wetland and allowing a claim as a "taking" for the protection of those wetlands that fit the difinition.

The original goal of the Clean Water Act was to make the Nation's waters swimmable, fishable, and drinkable. While we have not cleaned up everything, the Clean Water Act has brought us a long way on the road to that goal. The Shuster bill not only abandons that goal, but if enacted, will threaten our gains. Vote "no" on H.R. 961.

STEWART SCHOOL,
Oxford, OH, April 7, 1995.

SAVE OUR SEAS,
Washington, DC.

DEAR SIR OR MADAM: We are learning about oceans in school, and we don't like the pollution. Not only fish are dying, but birds, seagulls, and many more animals. I love animals and I hate pollution. Oil spills should be stopped. Well, I and 24 other friends of mine hate it.

Sincerely,

FAITH MANKA.

□ 1245

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, Members of the House, I appreciate the opportunity to speak on the rule which I support and then to assert that my support for the bill itself is based on several propositions.

No. 1, I am impressed by the fact that this is a bipartisan piece of legislation that has reached the floor. One can only read the results of the subcommittee vote and the full committee vote to assert for themselves that this is indeed a bipartisan crafted piece of legislation. That in itself answers the request of the American people that we approach this and many other problems in our country on that bipartisan basis for which they have been yearning for so many years. Here is an excellent opportunity to put into play our search for bipartisan solutions to the Nation's problems.

No. 2, if that were not enough, it also is bipartisan in this particular unique tenant about which I am concerned. The Chesapeake Bay has for a long time been a strong concern of the environmental community of our Nation, and not only nationwide are the environmentalists interested in the preservation, and the cleanup and the stabilization of Chesapeake Bay, but naturally the regional interests, Pennsylvania, Delaware, Maryland, et cetera, are also interested in the preservation of the Chesapeake Bay as we once knew it. In that regard this bill calls for adoption, as a matter of fact, of increase in, the President's recommendation for reauthorization of that portion that has to do with funding the Chesapeake Bay, another facet of the bipartisan approach that we can adopt by supporting the committee's version of this vital piece of legislation.

Mr. BEILENSON. Mr. Speaker, I yield 4 minutes to the gentleman from New Jersey [Mr. PALLONE].

Mr. PALLONE. Mr. Speaker, I rise in support of the open rule but against the bill. I think it is very important that we do have an open rule without time limits on this legislation because it is so controversial, and I do believe that the bill makes fundamental changes to the Clean Water Act that are not in the national interest.

I was very pleased to hear my colleague, the gentleman from New Jersey [Mr. SAXTON], speak before because he pointed out and reminded me about the fact that when we were first elected to the Congress, back in the mid or late 1980's, that a big part of our election was because we swore that we would come down here and try to stop ocean dumping and improve ocean water quality. The fact of the matter is that since those New Jersey beach closings in 1987 and 1988 the ocean water quality and the quality of our rivers and harbors have increased dramatically in the State of the New Jersey and throughout the country. People tell us every day, and in particular looking forward to the beach season this summer, they talk about how improved the water quality is and how many people want to come down to the shore and swim and enjoy our beaches and our water.

We cannot turn the clock back, and my fear is that this is what this legislation does. It in effect turns the clock back and makes it very possible that, if it were to pass 5, 10, 20 years from now, our water quality would significantly decrease.

I would want to mention a few things, and some of them were mentioned by my colleague, the gentleman from New Jersey [Mr. SAXTON], specifically about what the bill does and how it is dangerous.

With regard to coastal runoff, contaminated runoff is the number one contributor to water pollution. The committee bill would end an existing program mandating States to draw up enforceable run-off control plans in coastal zones, replacing with a voluntary approach similar to an existing program in inland areas. Environmentalists and the EPA have said that our efforts should be directed toward making run-off programs enforceable, not voluntary.

With regard to storm water, the bill would repeal an existing formal permitting process governing city and industrial storm water releases into service water, replacing it with a system emphasizing voluntary measures of compliance, again voluntary rather than mandatory.

With regard to wetlands, by changing definitions, the proposed legislation would remove as much as half of the Nation's wetlands from protection. The EPA would also be stripped of its veto power of decisions by the Army Corps of Engineers to grant wetlands development permits.

My colleague, the gentleman from New Jersey [Mr. SAXTON], mentioned a substitute, and we also from New Jersey have several amendments that would try to improve and eliminate some of these more egregious measures that are in the bill. I urge my colleagues on the Democrat side to support the Saxton-Boehlert substitute. This substitute would eliminate some of the worst problems that exist in this bill.

I was hopeful, however, that this would be the opportunity, during the authorization of the Clean Water Act, to actually improve the existing Clean Water Act, and so I have proposed, pursuant to this open rule again, certain amendments that would actually improve the existing law. I am not sure, and I think perhaps in this atmosphere it is unlikely that some of these will pass, but it is important to put them forward.

One of them is the Clean Water Enforcement Act. We have noticed that with the existing Clean Water Act there has not been sufficient enforcement. In many cases it pays to pollute because the fines that are imposed for pollution or violating one's discharge permit are too small. The Clean Water Enforcement Act would go after the bad actors, the repeat violators of their discharge permits, require mandatory penalties and increasing penalties so that it does not pay to pollute.

Another amendment that I will be proposing today under the open rule is something that my colleague, the gentleman from New Jersey [Mr. HUGHES], has repeatedly introduced and had passed in this House several times in previous sessions of Congress that would basically require a national program for beach water quality testing. In New Jersey we have a very good program that requires the testing of water quality before we decide whether beaches are open to bathers. I would like to see that included in the Clean Water Act, and again that would be a strengthening amendment.

I would urge my colleagues today to, please, support the substitute. Please support some of the amendments being put forth by those of us who would like to see the Clean Water Act improved.

Mr. QUILLEN. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. Mr. Speaker, the gentlewoman from Colorado [Mrs. SCHROEDER] talked about the Academy of Sciences and good science. We agree. First of all, San Diego has had a problem with effluent sewage. The sewage

treatment is actually treated, and then we want to put it 4 miles out to sea, but the EPA, which a rule was written for the Clean Water Act, was written, "If you dump that sewage into a river or a lake." The Academy of Sciences and Scripps Oceanographic said it actually enhances the ocean, but yet the EPA is unwilling to bend, and what we are trying to do is, when we talk about risk assessment and fairness, is to look because what it would do is cost the city of San Diego between $8 to $12 billion. That is $12 billion we do not have for law enforcement, or housing, or education and those kinds of things, but yet science says that we do not have to double-treat the sewage. It is treated in the first place, but we do not have to do secondary sewage. That is reasonable.

When we take a look at it, when we need to move ahead, a company near my district named Micogen has a chemical. It is not actually a chemical, but it is an insecticide type that is created out of DNA, and, when they use that, the actual farmers would grow their material or spray it over their crops, and it is not a toxic pesticide that run off into our lakes, and rivers and oceans. That is what we need to support as far as good science. But yet the administration has put a burden on our biotech industry in California. Those are the things we need to move ahead with.

The EPA, Endangered Species, Clean Water, Clean Air were all written with good intentions, but there are special interests on both sides of this area, those that do want to pollute and those that want to use it as a weapon for no growth at all. What the legislation that the Republican Party is coming up with is a commonsense application and suits neither one. Take a look at the issues that burden us every day. Look at the EPA and Endangered Species. I think we can work on a more bipartisan area.

Mr. BEILENSON. Mr. Speaker, I yield 2 minutes to the gentlewoman from New York [Mrs. MALONEY].

Mrs. MALONEY. Mr. Speaker, I support the rule.

The new majority has a case of special interest amnesia.

The special interests and polluters claim they are overregulated.

So the new majority is forgetting the days when our rivers burned, when fish and wildlife floated dead in our lakes and streams, and when our drinking water was in imminent danger of contamination.

The Clean Water Act remedied that situation.

Now, the new majority wants to gut the Clean Water Act.

The New York City water supply needs no additional purification, thanks to safeguards in the Clean Water Act and the Safe Drinking Water.

Weakened standards on pollution runoff under this bill will severely jeopardize the city's drinking water and our rivers and lakes.

So will loosened restrictions on sewage treatment plants that operate in watershed areas.

When is the new majority going to realize that some government regulations actually do some good?

This time, they are not just throwing the baby out with the bathwater.

They are throwing out the drinking water, too.

I implore my colleagues to think about what we drink and to reject this Dirty Water Act.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I urge the adoption of the rule. I urge the passage of the bill. Amendments to the Clean Water Act are long overdue. I urge the Members of this body to adopt the rule, and pass the bill, and go forward with this legislation which is so badly needed.

Mr. BOEHLERT. Mr. Speaker, will the gentleman yield?

Mr. QUILLEN. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Speaker, I would like to point out that the substitute, the alternative that will be advanced by my colleagues, the gentleman from New Jersey [Mr. SAXTON], the gentleman from Indiana [Mr. ROEMER], and I, 70 percent of our alternative is identical to the committee bill. So there is much to be said for a number of provisions in the committee bill that address some problems that concern us all. We are focusing narrowly on those areas that need the most attention to preserve, and protect and enhance our Nation's waterways.

Mr. QUILLEN. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. WICKER). The question is the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. BORSKI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 414, nays 4, not voting 16, as follows:

[Roll No. 311]

YEAS—414

Abercrombie	Bachus	Barcia
Ackerman	Baesler	Barr
Allard	Baker (CA)	Barrett (NE)
Andrews	Baker (LA)	Barrett (WI)
Archer	Baldacci	Bartlett
Armey	Ballenger	Barton
Bass	Everett	Klug
Bateman	Ewing	Knollenberg
Becerra	Farr	Kolbe
Beilenson	Fattah	LaFalce
Bentsen	Fawell	LaHood
Bereuter	Fazio	Lantos
Berman	Fields (LA)	Largent
Bevill	Fields (TX)	Latham
Bilbray	Filner	LaTourette
Bilirakis	Flake	Laughlin
Bishop	Flanagan	Lazio
Blute	Foglietta	Leach
Boehlert	Foley	Levin
Boehner	Forbes	Lewis (CA)
Bonilla	Fowler	Lewis (GA)
Bonior	Fox	Lightfoot
Bono	Frank (MA)	Linder
Borski	Franks (CT)	Lipinski
Boucher	Franks (NJ)	Livingston
Brewster	Frelinghuysen	LoBiondo
Browder	Frisa	Lofgren
Brown (CA)	Frost	Longley
Brown (FL)	Funderburk	Lowey
Brown (OH)	Furse	Lucas
Brownback	Gallegly	Luther
Bryant (TN)	Ganske	Maloney
Bryant (TX)	Gejdenson	Manton
Bunn	Gekas	Manzullo
Burr	Gephardt	Markey
Burton	Geren	Martinez
Buyer	Gibbons	Martini
Callahan	Gilchrest	Mascara
Calvert	Gillmor	Matsui
Camp	Gilman	McCarthy
Canady	Gonzalez	McCollum
Castle	Goodlatte	McCrery
Chabot	Goodling	McDade
Chambliss	Gordon	McDermott
Chapman	Goss	McHale
Chenoweth	Green	McHugh
Christensen	Greenwood	McInnis
Chrysler	Gunderson	McIntosh
Clay	Gutierrez	McKeon
Clayton	Gutknecht	McKinney
Clement	Hall (OH)	McNulty
Clinger	Hall (TX)	Meehan
Clyburn	Hamilton	Meek
Coble	Hancock	Menendez
Coburn	Hansen	Metcalf
Coleman	Harman	Meyers
Collins (GA)	Hastert	Mfume
Collins (MI)	Hastings (FL)	Mica
Combest	Hastings (WA)	Miller (CA)
Condit	Hayes	Miller (FL)
Conyers	Hayworth	Mineta
Cooley	Hefley	Minge
Costello	Hefner	Mink
Cox	Heineman	Molinari
Coyne	Herger	Mollohan
Cramer	Hilleary	Montgomery
Crane	Hilliard	Moorhead
Crapo	Hinchey	Moran
Cremeans	Hobson	Morella
Cubin	Hoekstra	Myers
Cunningham	Hoke	Myrick
Danner	Holden	Nadler
Davis	Horn	Neal
de la Garza	Hostettler	Nethercutt
Deal	Houghton	Neumann
DeFazio	Hoyer	Ney
DeLauro	Hunter	Norwood
DeLay	Hutchinson	Nussle
Dellums	Hyde	Oberstar
Deutsch	Inglis	Obey
Diaz-Balart	Istook	Olver
Dickey	Jackson-Lee	Ortiz
Dicks	Jacobs	Orton
Dixon	Johnson (CT)	Owens
Doggett	Johnson (SD)	Oxley
Dooley	Johnson, E. B.	Packard
Doolittle	Johnson, Sam	Pallone
Dornan	Johnston	Parker
Doyle	Jones	Pastor
Dreier	Kanjorski	Paxon
Duncan	Kaptur	Payne (NJ)
Dunn	Kasich	Payne (VA)
Durbin	Kelly	Peterson (MN)
Edwards	Kennedy (MA)	Petri
Ehlers	Kennedy (RI)	Pickett
Ehrlich	Kennelly	Pombo
Emerson	Kildee	Pomeroy
Engel	Kim	Porter
English	King	Portman
Ensign	Kingston	Poshard
Eshoo	Kleczka	Pryce
Evans	Klink	Quillen

Quinn	Shaw	Torkildsen
Radanovich	Shays	Torres
Rahall	Shuster	Torricelli
Ramstad	Sisisky	Towns
Rangel	Skaggs	Traficant
Reed	Skeen	Tucker
Regula	Skelton	Upton
Reynolds	Slaughter	Velazquez
Richardson	Smith (MI)	Vento
Riggs	Smith (NJ)	Visclosky
Rivers	Smith (TX)	Volkmer
Roberts	Smith (WA)	Vucanovich
Roemer	Solomon	Waldholtz
Rohrabacher	Souder	Walker
Ros-Lehtinen	Spence	Walsh
Rose	Spratt	Wamp
Roth	Stark	Ward
Roukema	Stearns	Waters
Roybal-Allard	Stenholm	Watt (NC)
Royce	Stockman	Watts (OK)
Rush	Stokes	Weldon (FL)
Sabo	Studds	Weldon (PA)
Salmon	Stump	Weller
Sanders	Stupak	Whitfield
Sanford	Tanner	Wicker
Sawyer	Tate	Williams
Saxton	Tauzin	Wilson
Scarborough	Taylor (MS)	Wise
Schaefer	Taylor (NC)	Wolf
Schiff	Tejeda	Woolsey
Schumer	Thomas	Wyden
Scott	Thompson	Wynn
Seastrand	Thornberry	Young (AK)
Sensenbrenner	Thornton	Young (FL)
Serrano	Thurman	Zeliff
Shadegg	Tiahrt	Zimmer

NAYS—4

Dingell	Schroeder
Jefferson	Yates

NOT VOTING—16

Bliley	Lewis (KY)	Rogers
Bunning	Lincoln	Talent
Cardin	Moakley	Waxman
Collins (IL)	Murtha	White
Ford	Pelosi	
Graham	Peterson (FL)	

□ 1316

Mr. HILLEARY changed his vote from "nay" to "yea."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. GRAHAM. Mr. Speaker, I was inadvertently detained and missed rollcall No. 311, adoption of the Rule for H.R. 961, the Clean Water Act amendments of 1995. Had I been present, I would have voted "aye."

CLEAN WATER AMENDMENTS OF 1995

The SPEAKER pro tempore (Mr. WICKER). Pursuant to House Resolution 140 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 961.

□ 1316

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 961) to amend the Federal Water Pollution Control Act, with Mr. MCGINNIS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania [Mr. SHUSTER] will be recognized for 1 hour, and the gentleman from California [Mr. MINETA] will be recognized for 1 hour.

The Chair recognizes the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, I yield 15 minutes of my time to the gentleman from Louisiana [Mr. HAYES] for purposes of debate only, and I ask unanimous consent that the gentleman from Louisiana control the time.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

Mr. MINETA. Mr. Chairman, I yield 15 minutes of my time to the gentleman from Louisiana [Mr. HAYES], and I ask unanimous consent that he may control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentleman from Louisiana [Mr. HAYES] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in strong support of H.R. 961, the Clean Water Act Amendments of 1995.

This debate, Mr. Chairman, is essentially between two groups, between the professional environmentalists, the Washington-knows-best crowd, the EPA, the career bureaucrats, and the K-Street lobbyists on the one hand and the rest of America on the other hand.

It is extremely important to note, Mr. Chairman, that we bring this bill to the floor with strong bipartisan support. This bill passed the subcommittee by an overwhelming 19-to-5 vote with both a majority of Republicans and Democrats voting in favor of it. This bill passed the full committee by an overwhelming vote of 42 to 16, an overwhelming majority of Republicans voting for it and a full half of all the Democrats voting for it.

This bill, contrary to some of the fiction that is being spread about, keeps the goals of the successful clean water program while it fixes the problems that we have uncovered. And indeed, our process has been a very open process all along the way.

We have heard some crocodile tears here today about how quickly this bill has moved. The truth of the matter is, this essentially is the bipartisan bill that we tried to pass last year. Indeed, it is very significant to note that, while we have proceeded with an open process in committee and on the floor here today, an open rule today, last year this legislation was bottled up by the Democratic majority to the point that we were never even permitted to get a vote on this legislation.

So now we hear complaints about the process not being open enough when, in fact, it was worse than a closed process. It was a slammed-door process last year, and now I am very pleased that we do, indeed, have an open process and, in fact, the bill as reported out of committee was on the Internet 24 hours after it passed committee and has been available for the past several weeks.

Well, what does this bill do? It gives more flexibility to the State and local water quality officials. It is a fundamental shift from current Federal, top-down approach. Those who oppose the approach in this bill are saying that they do not trust the Governors and the State regulators. It provides a more reasonable risk-based regulation, consistent with recent House-passed legislation.

This bill requires EPA to subject its mandates and its regulations to risk assessment and cost-benefit analysis. In a major victory for common sense, this bill gives State and local government the flexibility to manage and control stormwater like other forms of runoff. And this bill provides market-based approaches allowing for trading in certain circumstances to provide the most cost-effective pollution reduction.

And this bill addresses unfunded mandates by providing regulatory flexibility. The bill reduces the cost of unfunded mandates, particularly in the area of stormwater management, where billions, yes, not millions, billions of dollars can be saved as a result of the approach in this bill.

Cities estimated—get this—cities estimated that the unfunded Federal mandates in the Clean Water Act cost the cities $3.6 billion in 1993. Grand Rapids, MI, a city of 250,000 people, had to spend $400,000 preparing its stormwater permit. The average cost to larger cities for stormwater permits exceeds $600,000. Tulsa, OK, had to spend $1.1 million just on their permit application, without solving the problem at all.

This bill also reforms the wetlands program. It provides for comprehensive reforms to the beleaguered wetlands permitting program. No longer will we have a situation, as in Morristown, NJ, where an airplane, the airport there, the pilot was unable to see the runway. And they were told they could not cut down a tree that was blocking the view because it was in a wetland. Or in Muncie, IN, an 80-year-old farmer, who had farmed his land all his life and his father and grandfather before him, inadvertently broke a water pipe and it flooded the field. They went in and told him he was no longer allowed to farm his farm because it was a wetland.

And there are hundreds and thousands of horror stories of the excessive regulation of wetlands, and this bill attempts to cure that. In fact, we have heard today about the National Academy of Sciences coming out with, finally, its wetlands approach and saying, alleging, that our approach is not scientific. Well, there is absolutely no scientific approach in the original clean water bill, because the original clean water bill does not even mention wetlands.

In fact, it is very interesting and sad to see the National Academy of Sciences politicized because their report was due 19 months ago. Then we were told, our staff was informed just last week that it would be, even though it was 19 months late, it would be impossible to have it before the 18th of May. And surprise, surprise, we scheduled this legislation for floor debate today, and it appears magically yesterday.

Well, of course, the American people should know that the study was funded by the EPA bureaucrats downtown. So, sadly, the National Academy of Sciences has been politicized for this debate. We regret that.

Beyond the wetlands issue, our bill provides renewed investment in our Nation's clean water infrastructure. We provide over $3 billion a year authorized for this program. Antienvironmental? We provide more money for the program than has previously been provided. Indeed, in spite of all the money we provide, clean water costs in 1996, estimated by EPA, are $23 billion for our country. Yet the total Federal environmental grants to State and local governments will total a little over $3 billion. In fact, EPA estimates that the States face long-term clean water capital needs of over $137 billion over the next 20 years.

Well, what is it that this bill does not do? There has been a concerted effort to mischaracterize the provisions of this bill. This bill does not, as has been alleged in the left-wing press, abolish a requirement that industry treat contaminated water for toxic chemicals and heavy metals for discharging it into urban reservoirs.

The bill allows for the removal of redundant pretreatment requirements before industry sends their wastewater to municipal treatment plants. Those plants must still enforce local pretreatment standards that prevent pollutants from interfering with or passing through the treatment works.

This bill does not wipe out the coastal nonpoint program, and, as some claim, make nonpoint programs weaker everywhere. The bill authorizes more funding for nonpoint programs. It retains environmental safeguards such as achieving water quality standards while providing more flexibility in getting there.

Yes, it repeals the controversial coastal zone provision, but—and get this—it includes the successful components into the national nonpoint program. It eliminates two separate nonpoint programs, but it combines them into one in a victory for both State flexibility and regulatory reform.

Nothing has been sadder than to see our process mischaracterized. The New York Times, in what could only be described as yellow journalism, wrote that this bill was written by Republicans behind closed doors with industry.

□ 1330

What is the truth? What is the easily verifiable set of facts? The original introduction of this bill had 16 cosponsors, 8 Republicans, 8 Democrats. Written by Republicans? Behind closed doors? The National Governors Association sent us a letter commending us for including them more than they had ever been included in the past. Behind closed doors? With industry?

Let me share with Members just some of the groups that strongly support our legislation, and were key participants. Just today, today, May 9, we received this letter from the National Governors Association which said, and I quote: "we urge approval of this bill, H.R. 961." Let me say it again: "We urge approval of this bill, H.R. 961."

They go on to say:

> Once again, we wish to express our strong appreciation for the unprecedented opportunities for State input in the development of an effective Clean Water Act reauthorization bill.

Written behind closed doors? I thank the governors of America, Republican and Democrat, for saying they support our bill, and for thanking us for including them in the process.

It does not end there. We have a letter, again dated today, from the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors, which says:

> Of particular concern to the Nation's local elected officials is the future of the stormwater management program. The National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors—who together represent all the Nation's local elected officials—strongly oppose any efforts to amend the stormwater program approved by the Committee.

They go on to say:

> Charges that H.R. 961 rolls back environmental protection and that it guts the Clean Water Act are totally unfounded,

this from all the local officials across America.

However, it does not end there. Again we have another letter today from the Association of State and Interstate Water Pollution Control Administrators, the people on the firing line, the people who have to implement our laws, who write:

> With its new comprehensive approaches to nonpoint source, watershed and stormwater management, H.R. 961 sets forth a framework that better protects this Nation's waterways.

It goes on to say:

> It maintains a firm commitment to the Clean Water Act's goals, with more flexibility at the State and local levels to determine how they are best achieved.

It does not stop there. We have in front of us a letter dated today from the Water Environment Federation, 42,000 water quality specialists across America and around the world, which says:

> We therefore want to again urge you to support the Clean Water Act Amendments of 1995 (H.R. 961) on the House floor.

Therefore, what about these spurious allegations that the bill was written behind closed doors, by Republicans, with industry? They are demonstrably factually false. Why is the national media writing that? The national media is in the hip pocket of the environmental bureaucrats here in this town, and they have not given us a fair shake. The American people should understand that. There is no sense in our ducking that reality. It needs to be said, and it needs to be said very, very clearly.

Beyond the support I have just outlined, agriculture across America strongly supports our bill. The NFIB has said that not only is final passage of this legislation a key NFIB vote this year, but they have informed us in writing that a vote against the Boehlert substitute will also be a key NFIB vote this year, so we have not only the National Governors, the NFIB, the League of Cities, the Association of Counties, the Conference of Mayors, the Association of State Water Pollution Control Administrators, the State Metropolitan Sewage Association, the Water Environment Federation, and on and on, a broad-based support to this bill.

What kind of attacks have we been subjected to? I must confess that originally I was a little perturbed when some environmental extremists attempted to disrupt our markup by throwing at us bottles of dirty water marked "Shuster spring water." That did not pleasure me. Then when they started passing out posters "Wanted, Bud Shuster, for polluting our Nation's Waters."

However, upon reflection, I was delighted that they did this. I was delighted that they did it, because it gives the American people an opportunity to see the kind of hysterical, irrational opposition we have to our legislation, so I thank those radical environmentalists for giving us this opportunity to point out the lack of substance to their arguments, and the fact that they must resort to these kinds of personal attacks.

Indeed, if the election last November was about anything, it was about our reforming government control, top-down government regulations, and

clean water is one of the areas crying out for reform.

Let me conclude by quoting something that Supreme Court Justice Breyer, a Democrat, wrote in a recent book. He talked about the environmental regulations, and he called environmental regulations an example of the classic administrative disease of tunnel vision. He wrote:

Tunnel vision arises when an agency so organizes its tasks that each employee's individual conscientious performance effectively carries single-minded pursuit of a single goal too far, to the point when it brings about more harm than good. The regulating agency * * * promulgates standards so stringent that the regulatory action ultimately imposes high costs without achieving significant additional safety benefits. Removing that last little bit [of pollution] can involve limited technological choice, high cost, * * * large legal fees, and endless arguments.

That is what this bill is about today, to fix these problems. I would urge my colleagues to support the bill we bring to the floor today, the bill which has strong bipartisan support, overwhelming Republican support in the committee, and a full half of the Democrats in the committee voting for passage of this bill. It deserves to be passed.

Let me also commend the chairman of the Committee on Appropriations, the gentleman from Louisiana [Mr. LIVINGSTON], who has been quoted numerous times as saying if legislation does not get authorized, there are not going to be any appropriations.

I would say to my friends, and particularly some in the other body, who I am told think that perhaps the way to stymie these reform efforts is to simply block this so there is no authorization, "If you care about the environment, I urge you to be in support of having an authorizing bill, because if there is no authorizing bill, according to the distinguished chairman of the Committee on Appropriations, there are not going to be any appropriations for clean water," so I think all of us had better get together and support good legislation so we can continue to clean up our Nation's waters.

Mr. MINETA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, Americans know that there is very little as important in their daily lives as clean water. Their health depends on it, the quality of life in their community depends on it, and the prospects for economic growth depend on it. That is why Americans hold in such high regard the efforts we have made over the past two decades to clean up our Nation's rivers, lakes, and coastal areas.

Americans know they cannot clean up the water in their own community by themselves, because the pollution in their water comes from others upstream, maybe even in another State. It may come from a factory, it may come from a sewage treatment works, it may come from a feed lot—but what somebody else in another jurisdiction puts in the river becomes one of the most important issues in their lives. They drink it, their kids swim in it, they rely on a supply of clean water to attract new jobs to their area.

That is why we have a Federal Clean Water Act. And that is why we should not weaken the Clean Water Act now on the books.

There are many complex provisions in the Clean Water Act. But what matters most to the majority of Americans is that somebody is limiting the amount of pollution being dumped into the river upstream from them by factories and by sewage treatment works. That is what the American people want. That's what they have in the existing Clean Water Act. And that is exactly what this bill would take away from them.

This is a bill by and for major polluters.

There are differences of opinion about how to fix problems in the stormwater program. There are differences of opinion about how to fix the wetlands program. There are differences of opinion about whether or not we should do more to deal with pollution which runs off farms.

But when you get to the core of the Clean Water program, and you ask the question whether factories and sewage treatment works should be able to do less treatment than they are doing today before they discharge into the river, very few Americans would say that is what they want. Some want factories and sewage treatment works to do more, but very few think they should do less.

Yet that is exactly what this bill would do. Over a hundred pages of this bill are rollbacks, waivers, and loopholes for factories and sewage treatment works to dump more pollution upstream than they are allowed to today. Americans did not march in here and ask for that. Americans do not want that.

How did all these rollbacks, loopholes, and waivers for big industry and big sewage treatment works get into this bill? Almost none of them were in the introduced bill. Almost none of them were in the bill we held hearings on. Almost all of them first appeared after hearings were over and right before we went into markup, at which point the bill roughly doubled in size.

What do these hundred-plus pages do? Too much to itemize here, but the administration's veto statement provides a brief summary. It says,

H.R. 961 would undermine the strong standards which have produced significant water quality improvements in the last twenty years. H.R. 961 would allow polluters to circumvent national industrial performance standards * * * [and] would also undercut the existing Clean Water Act commitment to fishable and swimmable waters by allowing new ways to avoid or waive water quality standards. These provisions could create incentives for polluters to pressure states into offering environmental concessions. * * * Lower standards in an upstream state would mean higher costs to achieve clean water in downstream states.

These rollbacks, loopholes, and waivers sometimes repeal a requirement outright; they are sometimes written as though they are a waiver at the discretion of the regulating agency, but under the bill the agency in fact would have no discretion; and they are sometimes written as though it really is up to the regulating agency, but if the agency says no, the polluter will have new grounds to sue and to tie the issue up in courts for years, while the pollution continues. This is, in fact, one of the worst features of this bill, because it will make the Clean Water program more like the Superfund program, all litigation and no cleanup.

This bill has many other features which are contrary to the public interest.

It attempts to fix the wetlands program, but in so doing eliminates 60 to 80 percent of all wetlands from the program, including parts of the Everglades; it directly contradicts the National Academy of Sciences study just released; and it puts huge new cost burdens on taxpayers.

It attempts to fix the stormwater program as it effects cities, but then uses that as an excuse to virtually eliminate the stormwater program as it effects industrial sites.

It adds billions to the deficit just in the next 3 years, and much more beyond that, according to OMB.

It adopts a version of risk assessment which was rejected on the floor of the House after the advocates of risk assessment argued it would be unworkable.

And it would result in increased costs to many municipal ratepayers who will have to try to pay for more pollution cleanup because others are doing less.

But the worst thing it does is to allow factories and sewage treatment works, upstream from somebody else's town, somebody else's property, somebody else's drinking water intake, to pollute more than they do today. That is wrong, and we should not allow that to happen. In some cases industries would be turning off treatment facilities they have already built and are successfully operating. Whatever you think about wetlands or stormwater or feedlots, there is no excuse at the end of the day for voting yes on a bill that allows factories and sewage treatment works to do less than they are already doing.

I and other Members will offer amendments to strike these industrial and sewage rollbacks. But if we are not successful, then I would urge you to vote no on the bill itself. Make no mistake about it, this Nation would be better off, and our people would enjoy cleaner water, if we passed no bill, than if we passed this bill.

If we defeat this bill we can go back and do what we should have done all along—produce a moderate bill which fixes the wetlands program without throwing out most wetlands protection and raiding the Treasury; which fixes the municipal stormwater situation; which provides the basic authorization; and which, unlike this bill, can be signed into law.

□ 1345

Mr. Chairman, I reserve the balance of my time.

Mr. HAYES. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. CONDIT], chairman of the Blue Dog Coalition.

Mr. CONDIT. Mr. Chairman, I thank the gentleman from Louisiana for yielding me the time.

Mr. Chairman, first of all, let me thank the gentleman from Pennsylvania [Mr. SHUSTER], the chairman of the committee, and the gentleman from California [Mr. MINETA], the ranking minority member, for their graciousness in allowing us their time. We appreciate that very, very much. It gives us an opportunity to add some constructive and positive input into H.R. 961. We want to thank them publicly for that.

Let me also make recognition of the contribution on the committee of the gentleman from Louisiana [Mr. HAYES] and the gentleman from Texas [Mr. LAUGHLIN]. They have done a great service to this House and to people across this country in fighting the good battle of adding language and having a constructive input in that process, in making this what we believe to be a better bill.

Let me just remind the Members that are listening that what H.R. 961 does, some of the things that we have been working and fighting on for a long period of time. It provides comprehensive wetlands reform, which we have worked on and taken action on already this year, but we need to do it once again.

It establishes something that we have been fighting for for a long time in this House, and that is risk assessment, cost-benefit analysis, consistent with what we did with H.R. 9. It also helps place greater emphasis on voluntary incentives to base nonpoint source programs, which are extremely important to those of us who represent agricultural areas throughout this country.

Finally, what this bill does that I think is extremely important, it adds flexibility and responsibility to States and local governments which they have been asking for for a number of years. We have a great opportunity today, and that is to make changes in the Clean Water Act, at the same time protecting the public interest.

I once again want to thank the gentleman from Louisiana [Mr. HAYES] and the gentleman from Texas [Mr. LAUGHLIN], and particularly the gentleman from Pennsylvania [Mr. SHUSTER], the chairman of the committee, for their leadership in this area. I encourage all the Members who are interested in those issues that I have mentioned, plus other issues to come down today, listen to the debate, reject those amendments that do not improve this bill, and pass this bill on final passage.

Mr. SHUSTER. Mr. Chairman, I yield 2 minutes to the gentleman from Massachusetts [Mr. BLUTE].

Mr. BLUTE. Mr. Chairman, I thank the distinguished chairman for yielding me the time and for his efforts on this important reform legislation.

Mr. Chairman, I rise in support of H.R. 961, the Clean Water Amendments of 1995, because it provides a progressive and innovative framework for addressing the environmental water quality issues that our Nation faces. It is a practical, bipartisan bill that builds upon the important environmental standards and safeguards encased in the 1972 Clean Water Act, but reassesses the direction of the legislation to provide flexibility for States and local communities in achievement of those standards.

Everyone recognizes that the Clean Water Act of 1972 was a seminal piece of legislation which laid the groundwork for significant improvement in our Nation's water quality. When it was written over 20 years ago, it focused on the major environmental problem facing our country at the time, point source pollution. By imposing uniform nationwide standards and centralizing control of those standards in Washington, the Clean Water Act of 1972 provided a successful initial approach to pollution cleanup. It has been an effective tool for getting us to where we are today.

But times have changed, and it has become apparent that the one-size-fits-all approach that worked over two decades ago is not wholly and completely relevant or effective today. Point source pollution has been reined in significantly. Now it is evident that the problems associated with non-point source pollution have not been adequately addressed.

In fact, there are many unintended problems that have emerged from this old legislation, most notably the unacceptable costs and regulatory burdens that have been placed on States and local communities which dwarf dwindling environmental gains. My State of Massachusetts, for example, faces the highest per capita cost in the country for compliance with the mandates imposed by the current Clean Water Act.

The one-size-fits-all approach worked well to level the playing field initially, but it overlooked the fact that our Nation is composed of a series of diverse regions.

Mr. Chairman, I would end by saying I strongly support this Clean Water Reform Act. I commend the chairman for his work in this area.

Mr. MINETA. Mr. Chairman, I yield 3½ minutes to the gentleman from Pennsylvania [Mr. BORSKI], the ranking Democrat on the Subcommittee on Water Resources and Environment who has done so much work on this.

Mr. BORSKI. Mr. Chairman, I thank the distinguished gentleman from California for yielding me the time.

Mr. Chairman, I wish to express my strong opposition to H.R. 961, a bill that is inaccurately called the Clean Water Act Amendments of 1995.

Let us be clear about this, Mr. Chairman. If this bill becomes law, our waters will be dirtier, there will be more outbreaks of waterborne disease and there will be far fewer valuable wetlands.

It cannot be hidden behind talk of flexibility or local option, the goal of this bill is to make it easier to pollute our Nation's waters.

This bill takes us back to the days before 1972 when many rivers were open sewers and some even caught on fire.

In 1972, when the Clean Water Act was passed, only one-third of our Nation's rivers were fit for fishing and swimming. Today, more than 60 percent of our waters meet that test.

This is a record which should make us proud. It is not time for reversal of the Clean Water Act.

H.R. 961 will lead us backward by removing 60 to 80 percent of our Nation's wetlands from protection, including parts of the Florida Everglades, the great dismal swamp, and the New Jersey shore.

It will do virtually nothing to reduce pollution from runoff, the No. 1 cause of pollution in our Nation's waters. Polluted run-off into drinking water caused 400,000 illnesses and 104 deaths in Milwaukee 2 years ago.

This bill will mean more Milwaukees in the future. This bill even eliminates the one effective program we have to control run-off pollution in coastal areas—over the objections of the coastal States organization.

It is not just the coastal States organization that has concerns about this bill. It is the National conference of State Legislators, the Association of State Wetland Managers, the National Governors' Association, inconsistent with their wetlands policy, the International Association of Fish and Wildlife Associations.

There are just too many concerns that have been raised by too many groups about this bill.

It is a bill that will gut the core of the Clean Water Act, the basic national clean water standards that everyone must meet.

This bill will give us anti-environment races all over the country as local governments compete to attract development by reducing environmental standards and sending the pollution downstream. This is simply the

wrong direction for the Clean Water Act.

We should be working to fix what needs to be fixed in the Clean Water Act so we can continue to protect the environment while promoting economic growth.

I have had my frustrations with parts of the Clean Water Act and the way some of it has been implemented.

These parts should be fixed.

We should fix the stormwater program to make it rational and sensible.

We should eliminate the unnecessary administrative requirements of the State Revolving Loan Fund and get the money out to the States.

We should fix the coastal zone Non-Point Pollution Program to allow targeting of impaired or threatened waters.

We should approve the new combined sewer overflow policy to help the Nation's older urban areas.

We should fix the wetlands permitting process that ties up too many projects in a snarl of red tape and treats all wetlands alike.

Instead, this bill gives us waivers, exemptions, repeals and limitations that will mean less environment protection for all Americans.

The American people do not want us to allow more water pollution. They want us to protect them from corporate polluters.

I urge my colleagues to vote no on H.R. 961 and let us write a bill that gives the American people clean water and environmental protection

Mr. HAYES. Mr. Chairman, I yield 1 minute to the gentleman from Oklahoma [Mr. BREWSTER].

Mr. BREWSTER. Mr. Chairman, I first want to thank Chairman SHUSTER and members of our committee who have worked tirelessly in producing what I think is a commonsense balance between Federal and local control over clean water programs.

This bipartisan bill recognizes the critical need for flexibility at the State and local level. While, at the same time, the bill retains all existing EPA water quality standards and requirements.

Most importantly, this bill represents a renewed investment in our Nation's clean water infrastructure by authorizing $15 billion for the State revolving loan fund, among other programs.

This bill gives States and local officials the flexibility to manage and control stormwater like other forms of runoff. By providing this regulatory flexibility, the bill reduces the cost of unfunded mandates to our States.

The bill also provides needed comprehensive reforms to the Wetlands Permitting Program, while protecting true wetlands for all of us to enjoy.

Mr. Chairman, I think this is a commonsense approach to reauthorizing the Clean Water Act, and would urge my colleagues to support this bill.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the gentleman from Michigan [Mr. EHLERS].

(Mr. EHLERS asked and was given permission to revise and extend his remarks.)

Mr. EHLERS. Mr. Chairman, I thank the gentleman from Pennsylvania for granting me time, because I rise with some hesitation to speak against the bill as it came from the committee.

On the one hand, I appreciate what the gentleman from Pennsylvania, the chairman of the committee, has done, because clearly we need more commonsense application of the laws governing the environment and the regulations that are formulated.

At the same time, coming from the State of Michigan, which has more coastline than any of the 48 contiguous States and which has numerous wetlands, I must rise to speak against the wetlands provisions of the bill. They are unworkable. It would do great damage to wetlands in many States, and particularly in the State of Michigan, if those standards were applied in our State.

In particular, the hunters and fishers of our State, and of many States around the Midwest who come to Michigan to pursue their sport, will be deeply disappointed in the wetlands provisions because they are going to have a very deleterious effect upon the population of waterfowl, the population of fish, and, of course, there will be environmental damage as well due to the loss of the filtration properties of the wetlands that we have in our beautiful State.

Therefore, although I support the attempt to have a more commonsense approach to environmental regulation, and I will continue to support that, through risk assessment, and so forth, I do oppose the new provisions regarding wetlands and certain other portions of the bill and support the Saxton-Boehlert substitute.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey [Mr. PALLONE], a former colleague on our committee who has now gone on to the Committee on Commerce, but who has exhibited a great deal of interest in the work of our committee.

□ 1400

Mr. PALLONE. Mr. Chairman, I just wanted to take my 2 minutes if I could to talk about the economic impact of this bill. It is interesting because I think that many of the proponents have been making the argument, looking at the so-called cost-benefit or the risk assessment provisions and suggesting that somehow we need to revise the Clean Water Act during this reauthorization to look at cost-benefit and risk and other things which I might characterize as monetizing the Clean Water Act, something that was mentioned in the New York Times.

From my perspective though and I think from that from many of the coastal states and other parts of the country, by severely weakening the Clean Water Act as this bill does it is jeopardizing many of our most important industries, most notably the tourism industry.

In my part of New Jersey, in fact New Jersey as a whole, tourism is the No. 1 industry and we know that estimates are something like $400 billion a year in this country nationwide comes from the travel and tourism industry.

We also have to note that clean water is very important to the fishing industry, a $55 billion a year industry in this great Nation and also concerns about drinking water. Everyone relies on drinking water, municipal drinking water or other drinking water supplies.

The point I am trying to make, Mr. Chairman, is that by severely weakening the Clean Water Act we are in effect putting on our country and on our citizens and on our taxpayers a great deal of expense because if they lose the money that comes from travel and tourism, if we lose the money that comes from the fishing industry, if we are required to spend billions of dollars in the future to provide for better drinking water or cleaner water than ultimately the taxpayers and the country and the economic output of the country suffers. And I think that those who are urging that somehow weakening this act benefits the taxpayer because the taxpayer is in some way going to save some money is simply a false argument.

Mr. HAYES. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee [Mr. TANNER].

Mr. TANNER. Mr. Chairman, I support H.R. 961, the bipartisan clean water reauthorization. I would like to say at the outset no one disputes the importance of clean water to our citizens. Nor does anyone that I know of dispute that the Clean Water Act has generally been a successful vehicle for improving the quality of our water.

Having said that, I think that it is equally clear that some of the provisions of the act need reform. In my view the area of current law that is in most need of an overhaul is section 404 of the Clean Water Act.

Over the years in our part of the country this section has been increasingly abused by Federal regulation and regulators. This abuse has made the wetlands permitting process a nightmare for private land owners and has led in some cases to literally an assault on the rights of many Americans.

This bill which the gentleman from Louisiana [Mr. HAYES] and the gentleman from Texas [Mr. LAUGHLIN] have helped to author takes, I think, constructive steps to correct some of these problems. The new wetlands classification process will permit the protection of our valuable wetlands while

pragmatically allowing development of property that is of no importance to our environmental concerns.

Additionally the bill includes language from H.R. 925 that was overwhelmingly passed earlier this year in the House, and it would simply require compensation for landowners whose property value is diminished through government regulatory action.

I think most everyone agrees that as protectors and defenders of our Constitution no one can countenance the taking of private property without just compensation.

I have been contacted by many people in our district in middle and west Tennessee in what is a rural district over the years. Many of these farmers have been crying for relief from the burden of this out-of-control wetland permitting process. And I think this bill today is a most important step in this process.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the gentleman from Washington [Mr. TATE].

Mr. TATE. Mr. Chairman, I thank the gentleman for yielding time to me.

First of all I would like to commend the chairman for his fine work on this particular piece of legislation. This truly is a clean water bill. And it advances our congressional commitment to protecting our environment. It is common sense, it is cost effective. Things are now going to be based on sound science and not on fad, not on emotion and not on the whims of the day.

And it upholds property rights, protects fairness, and provides incentives for people to comply, not a big club, but encourages people to do what they believe is right and that is protecting our clean waters.

It also streamlines the bureaucracy, and we need the bureaucrats back here in Washington, DC, not to be making every decision for cities that they cannot even pronounce in my district.

Most importantly, this bill protects the Puget Sound which is the pristine waters that border my district. It is a bipartisan bill, has strong bipartisan support and it upholds the true values that we are concerned about and that is clean water, not just more redtape, and I urge the support of Members of this body to support truly a clean water bill.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentleman from Rhode Island [Mr. KENNEDY].

Mr. KENNEDY of Rhode Island. Mr. Chairman, I stand in strong opposition to H.R. 961. The Clean Water Act was written in 1972. In my State of Rhode Island, we have made a great deal of progress since then, thanks to the act.

In 1970 the Blackstone River, north of Woonsocket was a dead river. Today at least 16 different fish species swim in the Blackstone, including game fish such as large-mouth bass and brown trout.

In 1970 the Rhode Island Department of Health discovered metals in the fish of Narragansett Bay. Quahogs contained mercury, lead, and chromium. Today these are down 90 percent and are well within the safe zone because of private industry cutting back on discharges due to more stringent permits.

In 1970 because Jamestown had no sewer treatment plant, 200,000 gallons of raw sewage was dumped into Narragansett Bay everyday. Shellfishing and swimming areas were closed. Today the town has a secondary sewage treatment plant and most of the Island is open to shellfishing and swimming.

The Clean Water Act not only provides Rhode Island with the tools necessary to restore our coastal waterways, but also fosters economic development by preventing future shellfish bed closures through a full implementation of its coastal nonpoint source management program.

Anyone who has ever farmed Mount Hope Bay or the Kikamuit River knows that because of stormwater runoff from parking lots and failing septic systems the wildlife in the water becomes polluted and inedible. Simply changing the definition of swimmable and fishable does not change the fact that the fish will be inedible. Hence, it does not mean the fish can be sold. The economy and the environment are not competing interests.

In my State, relaxing standards will do more economic harm than good. Look at the facts. In Rhode Island commercial fishing industry is a $100 million industry, up 700 percent since the Clean Water Act was first implemented in 1972. Oppose H.R. 961. It is bad for the environment and bad for our economy.

Many of you may not know that Rhode Island is the Ocean State. Because of the vast array of beaches, rivers, and boating marinas, the travel and tourism industry generates almost $1.5 billion a year for my State. The vast majority of this occurs in and around Narragansett Bay. Salt water swimming is enjoyed by 67 percent of the Rhode Island population and $70 million is spent in sport fishing every year. I seriously doubt that Rhode Island would be such an attractive place for almost 2 million people to visit every year if our waters were polluted with metals that are especially harmful to our children and the elderly.

I ask you, who would want to smell the raw sewage blowing off the bay or pull a dying fish from the water. In short, if we gut the Clean Water Act today we will not only be jeopardizing our health, but the economies of our Nation's coastal States.

It was the Clean Water Act regulations that allowed Rhode Island to reduce pollution in the Mount Hope Bay, adding 800,000 lbs. of additional quahogs to each years harvest.

It was the Clean Water Act that saved Narragansett Bay so that many of New England's most important fish, like winter flounder, striped bass, and fluke could safely repopulate themselves.

And it was the Clean Water Act that helped publicly owned wastewater treatment plants in Narragansett Bay achieve a 57-percent reduction in the amount of pollutants they discharge.

I ask all my colleagues to look not at the short-run interests, but the long-term concerns and quality of life of our citizens. We must act wisely to avoid the same recklessness that forced us to legislate the Clean Water Act in the first place.

Unfortunately, environmentalists are typically characterized as eccentrics, with nothing better to do than complain about obscure pollutants or rare animals. I abhor that characterization. In my State, environmentalists come in many forms. They are the hard-working lobstermen and quahogers who farm Narragansett Bay. They are the sportsmen who canoe down the Runnins River or fish for striped bass in the Atlantic. Most importantly they are our children who swim in our rivers and play in our parks.

I am proud to call myself an environmentalist. A person who sees the future not just on a balance sheet but by the air we breathe, the water we swim in, and the diverse variety of life we share our community with. In the words of Teddy Roosevelt, our 26th President and renowned conservationist:

> To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.

Oppose H.R. 961 and support economic environmentalism rather than economic expediency.

Mr. HAYES. Mr. Chairman I yield 2½ minutes to the gentleman from Illinois [Mr. POSHARD].

Mr. POSHARD. Mr. Chairman, I rise in support of this bill. In particular, I rise in support of the balance this bill bring to our public policy on nonpoint source pollution control as well as wetlands definition and enforcement.

Representing a large rural district in central and southern Illinois there is not a single day that goes by that I do not deal with these problems.

The real question facing the rural areas of America is how we can best manage to come into compliance with the standards of clean water in this country, and in this bill, in the most cost-effective and efficient way possible. We do not have unlimited resources in this country.

The farmers of this country have been good conservationists; they have to be to sustain a family income on which they can live. They have proven through the conservation reserve program and other solid environmental protection measures that they can produce excellent watershed management on a voluntary basis without additional Government mandates. And those good voluntary watershed management practices have made positive contributions to the clean water in this country, not negative.

With respect to wetlands, not every acre that is on the books today are

true wetlands, and even the true wetlands are not all of the same value. And in any case, there is absolutely no need for three separate Federal agencies to have jurisdiction over this issue. This bill brings a commonsense solution to these problems.

To suggest, as someone has already done today, that Americans should be afraid of turning on their tap water as a result of this bill, that we are all going to be drinking bottled water, is the kind of talk I just cannot believe. That kind of talk only fuels the paranoia against Government that is running rampant in this country today.

Mr. SHUSTER. Mr. Chairman, I yield 30 seconds to the distinguished gentleman from Ohio [Mr. LATOURETTE].

Mr. LATOURETTE. Mr. Chairman, first I want to commend Chairman SHUSTER for his leadership in bringing H.R. 961 to the floor.

Mr. Chairman, I rise today in support of H.R. 961, and in particular title I of H.R. 961, which reauthorizes environmental programs that are critical to the waters of the Great Lakes region. More than $12 billion in Federal investment has brought the Great Lakes back from the brink of death and is credited for making the Great Lakes great again. A $4.5 billion annual Great Lakes sport fishing economy is a further testament that our country will continue to reap important economic benefits by passing H.R. 961 by providing $3 billion in programs such as wastewater treatment facilities. This will serve to build on the success of the Clean Water Act.

H.R. 961 also seeks to address the contaminated sediments problem that clogs the Great Lakes system.

H.R. 961 also contains provisions to better coordinate research activities among Federal agencies engaged in research on the Great Lakes.

H.R. 961 is also supportive of making sure the fish in the Great Lakes are safe to eat.

I urge passage of H.R. 961.

Mr. SHUSTER. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Wisconsin [Mr. PETRI].

Mr. PETRI. Mr. Chairman, I rise in support of the bill and in opposition to the Boehlert amendment.

Mr. Chairman, I want to express my support for H.R. 961, the Clean Water Amendments of 1995.

This bill makes significant commonsense reforms to our Nation's clean water program. It maintains the goals of the Clean Water Act while providing more flexibility to our States and local authorities who know their States and their waters and know best how to reach those goals. Let me point out that this flexibility is given to the States and also to EPA to utilize if they see fit—industry has not been given sweeping unilateral waivers from critical requirements of the act as has been charged.

This bill strengthens the current nonpoint source program and replaces the current broken stormwater program with one that will be more effective and gives States a range of tools—from voluntary measures to site-specific permits—to deal with stormwater runoff.

The section on watershed management encourages States to pursue comprehensive point and nonpoint source programs on a watershed basis to most efficiently meet water quality standards. The bill continues the Federal-State partnership by authorizing Federal assistance to the States for the construction of wastewater treatment plants, to address nonpoint source pollution, to continue cleanup of the Chesapeake Bay and the Great Lakes, and for a host of other pressing water quality needs.

H.R. 961 also incorporates many of the principles that the House has already passed, such as risk assessment and cost-benefit analysis to ensure that our limited financial resources are utilized in such a way as to get the greatest water quality benefit.

Now, with any bill of this length which addresses such complex issues, there undoubtedly will be some provisions that may cause some concern. For example, I may have some concerns regarding some of the wetlands provisions, but I realize that this bill will continue to be a work in progress and undoubtedly more revisions will be made before the bill finally is enacted into law.

Nevertheless, Mr. Chairman, we know that Americans want to preserve and protect our environment, particularly our precious water resources, and we know that they want commonsense regulation—that was made clear in last year's elections. I believe we can have both as is accomplished in this bill, and I urge the House to approve H.R. 961.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MILLER], the very distinguished ranking Democrat on the Committee on Resources.

Mr. MILLER of California. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the legislation before us today exemplifies the dangerous liaison between private interests and the majority in the House when it comes to amending our Nation's laws.

That close partnership is nowhere more evident than in the proposed revisions of the Clean Water Act—the law that has cleaned up San Francisco Bay near my district, and thousands of other rivers, streams, bays, and other bodies of water throughout America over the past quarter century.

Are there problems with the Clean Water Act? Of course. I have concerns about some of the ways in which the law has been implemented, too, and if we had a real commitment to reform, I have little doubt we could develop a sound alternative to this bill.

But let us make no mistake: H.R. 961 is not about fixing the mistakes. It is about devastating one of the great achievements of environmental policy in this country. And this emasculation of the law is taking place at the request, and at the direction of, powerful special interests who have been granted unprecedented access to the drafting of the legislation.

Strewn throughout H.R. 961, particularly in title III, are special exemptions, waivers, and exclusions that benefit these special interests:

An exemption from effluent limitations for coal remining operations that discharge into waters that already fail to meet water quality standards;

A provision limiting EPA's ability to upgrade discharge standards for industrial polluters which benefits the pulp and paper industry and others;

An exemption from wetlands permit requirements for iron and steel manufacturers;

An exemption from the silver discharge standard for the photoprocessing industry;

An exemption for oil and gas pipelines.

Exemption after exemption provided to high polluting industries by this legislation that masquerades as reform.

This is not reform. It is a clear example of special interest legislation, written on behalf of powerful interests and at the expense of our environment and the health and safety of the people of the United States.

I have introduced legislation that would require that the authors of any legislation prepared by private entities be disclosed before the Congress voted to make special interest provisions the law of the land. Although the majority has not yet accorded me a hearing on my bill, I am hopeful that the majority will voluntarily disclose who sought and wrote these special interest provisions before asking our colleagues to vote them into law.

Regardless of who authored these exemptions, they are bad policy and should be rejected by the House.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, March 2, 1995.

To: Distribution.
From: Patricia Law.
Re: Clean Water Task Forces.

Thank you for agreeing to participate in a very ambitious legislative timetable for reporting a Clean Water bill, but one which we hope you will find constructive and will result in a product that we can all support.

Attached is the list of participants from yesterday's meeting indicating each organization's primary area of focus if it was provided. We will notify you as soon as possible of the Subcommittee Member assignments and dates for Task Force meetings. Our hope is to have these meetings at the beginning of next week. In the meantime, we encourage you to work together to identify outstanding issues and to formulate your proposals for addressing them. The following groups have agreed to take the lead for this front work. If you are not identified on the attached list as having an interest in a particular task force, we suggest that you call the lead.

Nonpoint Source and Watershed: Thomas W. Curtis, Director, Natural Resources Group, National Governors Association, Hall of the States, 444 North Capitol Street, Suite 267, Washington, D.C. 20001-1512, 202/624-5389, 202/624-5313 (fax).

Point Source: Charles W. Ingram, Associate Manager, Environment Policy, U.S. Chamber of Commerce and Clean Water Industry Coalition, 1615 H Street, N.W., Washington, D.C. 20062-2000, 202/463-5627, 202/887-3445 (fax).

Funding and Unfunded Mandates: Robert K. Reeg, Manager, Congressional & State Relations, National Society of Professional Engineers, 1420 King Street, Alexandria, VA 22314-2794, 703/684-2873, 703/836-4875 (fax).

Stormwater: Carol Kocheisen, Counsel, Center for Policy and Federal Relations, National League of Cities, 1301 Pennsylvania Avenue, N.W., Washington, D.C. 2004, 202/626-3028, 202/626-3043 (fax).

Wetlands: Kim Putens, Executive Director, National Wetlands Coalition, 1050 Thomas Jefferson Street, N.W., 7th Floor, Washington, D.C. 20007, 202/298-1886, 202/338-2361 (fax).

Please feel free to call me with any questions or assistance that you require from us. Again, we appreciate your involvement and look forward to working with you.

CLEAN WATER TASK FORCE PARTICIPANTS

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Sam White, America Crop Protection Association, 1156 15th Street, N.W., Suite 400, Washington, D.C. 20005, 202/872-3846, 202/463-0474 (fax), (nonpoint source).

Mark Maslyn, American Farm Bureau Federation and Clean Water Working Group, 600 Maryland Avenue, S.W., Suite 800, Washington, D.C. 20024, 202/484-3615, 202/484-3604 (fax) (nonpoint source).

Karla Perri, Director, Legislative Affairs, American Forest & Paper Association, 1111 19th Street, N.W., Suite 800, Washington, D.C. 20036, 202/463-2436, 202/463-2424 (fax), (nonpoint source, wetlands, point source, stormwater).

Christopher Myrick, Director, Government Relations, American Home Products Corporation, Suite 1001 1726 M Street, N.W., Washington, D.C. 20036, 202/659-8320, 202/659-2158 (fax), (point source, nonpoint source).

Cary L. Cox, Ashland Inc. and American Petroleum Institute, 601 Pennsylvania Avenue, N.W., North Building, Suite 540, Washington, D.C. 20004, 202/223-8290 x223, 202/293-2913 (fax), (point source).

Jennifer Boucher, Associated Builders and Contractors, 1300 North Seventeenth Street, Rosslyn, VA 22209, 703/812-2000, 703/812-8202 (fax), (funding).

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Rose Marie Sanders, Legislative Representative, Air & Water Chemical Manufacturers Association, 2501 M Street, N.W., Washington, D.C. 20037, 202/887-1123, 202/463-1598 (fax), (point source).

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Thomas W. Curtis, Director, Natural Resources Group, National Governors Association, Hall of the States, 444 North Capitol Street, Suite 267, Washington, D.C. 20001-1512, 202/624-5389, 202/624-5313 (fax), (nonpoint source).

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Peter A. Molinaro, Assistant Director, Government Affairs, Union Carbide Corporation and Clean Water Act Reauthorization Coalition, 801 Pennsylvania Avenue, N.W., Suite 230, Washington, D.C. 20004, 202/393-3211, 202/347-1684 (fax), (CWARC, point source).

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Mr. HAYES. Mr. Chairman, I yield 3 minutes to the gentleman from Ohio [Mr. TRAFICANT].

Mr. TRAFICANT. Mr. Chairman, I support the bill. This is a common-sense approach and balance between regulations and jobs, and it is sorely needed in our country.

This Nation has gotten so overzealous with this environmental business that if a dog accidentally passes water in a parking lot some government agent might deem it to be a wetland. A farmer cannot even maintain the creeks on their own property from spilling over and ruining their own cropland. What kind of sense is this?

The American people have had it. They are asking Congress to employ a little common sense. That is what this bill does.

I have a couple of amendments. No. 1 is, the first, a standard buy American, and there should be no problem. The second one, though, states that my amendment would allow for a waiver for the encouragement and development and use of innovative pollution prevention technologies, but only if those technologies are American made to every extent practicable. I expect to have support on that amendment.

But what I really wanted to talk about today is this Great Lakes initiative. The report is out. The Great Lakes initiative was originally to be guidelines, not strict binding rules, guidelines, not rules. I support the language in this bill that maintains guidelines, not binding rules for the following reasons: If implemented under binding status, the Great Lakes States will suffer as much as $11 billion in cost factors and as many as 33,000 jobs. Now, that makes no sense.

Finally, I want to talk about this wethey business. Manufacturers, with this bill, are not getting carte blanche to go out and ruin our environment, and there is a common-sense approach that will, in fact, encourage jobs to stay here in America instead of being chased offshore by these overzealous regulators.

And, Congress, let me say this, we are not going to have a job left in America if you continue with oppressive regulations that allow an open door policy to leave our country. There is a balance. That balance can be reached. Let us reach it here today.

I support H.R. 961 and urge its passage.

Mr. SHUSTER. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Utah [Mr. HANSEN].

Mr. HANSEN. Mr. Chairman, I stand in favor of the bill.

Mr. Chairman, today I stand to applaud the fine bipartisan work of the Transportation and Infrastructure Committee in crafting, what should be recognized as a victory for the American people, the environment, and common sense.

This bill recognizes the critical need for flexibility at the State and local level. The approach of H.R. 961 is to preserve environmental standards and safeguards in the Clean Water Act, while providing flexibility in achieving those standards. The Clean Water Amendments of 1995 recognizes and reaffirms the fundamental thrust of the original 1972 act while focusing on those areas where the law clearly needs updating. H.R. 961 is a commonsense approach to provide flexibility to local officials, reduce unfunded mandates, ease redundant and costly regulations, and make bureaucrats factor risk assessment into their decisions.

In crafting this bill, Members of both parties have realized that officials at the local level know how to address their water quality matters a lot better than the bureaucrats in Washington. It was the desire to have cleaner water in my small town of Farmington, UT, 30 years ago that brought me into politics. It is the desire of all of us to have clean, safe water to drink and use. To mandate how standards must be reached may have worked in 1972, but it is my belief that city councilmen, mayors, Governors, and State regulators can be fully trusted to care for the water quality of their communities. They are closest to the situation and have the most to gain from achieving the high standards set out in this bill.

Without question, the current section 404 wetlands regulatory program is badly in need of reform. Since enactment of the Clean Water Act in 1972, the wetlands permitting program has been expanded broadly from a program affecting navigable waters, to a program regulating activities on 75 million acres of privately owned property.

I strongly support the wetland provisions of H.R. 961 as a major victory to achieve the Nation's wetlands conservation goals, while at the same time respecting the property rights of individuals. I applaud Chairman BUD SHUSTER and his committee for their fine work and urge strong support for passage of this historical bill.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished chairman of the Committee on Agriculture, the gentleman from Kansas [Mr. ROBERTS].

Mr. ROBERTS. Mr. Chairman, I thank the gentleman for yielding me this time.

The gentleman from California just made an allegory, made a statement that this is a dangerous liaison. It is not that. It is a partnership effort to prevent close encounters of the regulatory kind.

This is a good bill. For 15 years we have tried to get a bill like this making a partnership with industry, agriculture, environmentalists. Fifteen years we have been spinning our wheels. Thank you, Mr. Chairman, for your leadership in finally bringing a good bill to the floor of the House.

I want to talk about wetlands. The gentleman from Ohio just made a rather graphic reference to what the problem has been. It is true. We have now a well established procedure that says the land must be flooded if it is going to be a wetland. It must support water loving plants, and it must have hydric soils. The land must show clear evidence of all three characteristics.

Too long, too long we have been subjected to regulatory nightmares where a low spot in some farmer's field was declared a wetland in an area where no self-respecting duck would ever land. Let us end this business.

Let us pass this bill. It is a good partnership. I commend the chairman. I commend his leadership. No member of the Committee on Agriculture on either side should vote against this bill. It is a very good reform bill.

Mr. Chairman, I rise in strong support of H.R. 961, the Clean Water Amendments of 1995, as reported by the Committee on Transportation and Infrastructure.

As the Transportation Committee noted in its report, the Clean Water Act was last amended in 1987 and most of its authorizations expired in 1991. Because past Congresses could not get a bill out of either committee, our Nation's water quality programs have suffered. And, more importantly, Federal regulators have been allowed to run amok on private lands, entangling farmers, ranchers and other American businesses in unlegislated, prescriptive regulation. It is time to tell the regulators what the policy will be and follow up the enactment of this bill with vigorous oversight.

This bill sets sound policy for nonpoint pollution protection of the Nation's waters and amends Section 404 for a commonsense approach to the conservation of wetlands. Farmers and ranchers will find this policy to be both understandable, reasonable—and with proper implementation, very workable for American agriculture.

I want to emphasize two important parts of this bill that make it essential policy for the future of American agriculture: amendments to section 319 dealing with nonpoint source programs and title VIII amendments that rewrite section 404 provisions dealing with wetlands.

State water quality programs under section 319 of the bill are to be developed using voluntary, incentive-based standards that are likely to be achieved within the 15-year timetable set out in the bill. The amendments fully express the committee's correct understanding that the way to achieve water quality standards is not through command-and-control regulations, but by adopting policies that are possible, and timeliness and deadlines that make sense.

To the extent agriculture is responsible for nonpoint source discharges, the committee rightly chose to avoid the top-down approach to regulation. We cannot regulate nonpoint sources as if pollution was coming from the end of a pipe. In addition, the bill includes section 6217 of the Coastal Zone Management Act within section 319, ending a duplicative regulatory regime for agricultural producers in coastal areas.

I would caution Members about one provision that admittedly has caused me some concerns—concerns the Agriculture Committee may want to address once this bill is law and the 1995 farm bill has been enacted. That provision gives authority for the chief of the Natural Resources Conservation Service at the U.S. Department of Agriculture to enter into written agreements with States as they develop their section 319 water quality programs. The incentive for such an agreement would be to give agricultural producers the assurance that they are in compliance with the Clean Water Act. But, the problem is how the agreement may be written.

Frankly, farmers and ranchers have not been well served by a similar agreement on wetlands that was hailed by the Clinton administration as the end of controversy on the regulation of wetlands under both the Clean Water Act and the 1985 Food Security Act. We were told under this agreement farmers would no longer be subject to successive visits by Federal bureaucrats. There would be a final outcome on wetland determinations on the ground. Unfortunately, the members of the Agriculture Committee took this announcement on good faith. That faith has been sorely abused. The same kind of regulatory abuse is possible here. The Agriculture Committee intends to watch this closely.

The wetlands provisions of this bill are redesigned to finally end the abuse of farmers, ranchers, and other landowners. Title VIII is sound policy. It is derived from H.R. 1330, a bill introduced by the gentleman from Louisiana [Mr. HAYES] to restore sanity to our national wetlands policy. It recognizes there are different functions and values of wetlands and allows for a "type C" wetlands classification that will be left outside of Federal jurisdiction.

The Chairman's amendment to be offered today eliminates the concept that land no longer meeting wetland criteria can be classified a prior converted wetland, serving limited wetland functions. A prior converted cropland, one that was drained or filled prior to December 1985, no longer exhibits wetland characteristics—and, should be in law and regulation considered as an upland. These agricultural bottomlands, many of which have been dry for a generation or more, are not wetlands.

However, under current law, regulators look at prior converted croplands as just another parcel of private property they control through regulatory fiat which means more regulation, more hassles for the landowner, but no significant gains are realized for the environment. I want to make certain this is clear: prior converted croplands are not wetlands. Under this bill, they fall outside of Federal jurisdiction under the Clean Water Act.

The delineation procedures established under the committee-reported bill will make sense to farmers and ranchers. The land must be flooded. It must support water-loving plants. It must have hydric soils. The land must show clear evidence of all three characteristics.

Finally, Mr. Chairman, farmed wetlands and other agricultural lands determined to be exempt from subtitle C of the 1985 Food Security Act shall be exempt from the Clean Water Act so long as those lands are used for agricultural purposes.

To my colleagues, I say this is good, positive legislation. It protects the wetlands the public believes need protection; it, hopefully, will keep the bureaucrats off private property at least for the purposes of the Clean Water Act. It will bring to an end nearly a decade of abusive, over-reaching regulation. I urge its enactment.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to our very fine colleague, the gentleman from West Virginia [Mr. RAHALL], the ranking Democrat on the Surface Transportation Subcommittee of our committee.

Mr. RAHALL. Mr. Chairman, it is indeed fitting that we are considering this bill today, this alleged reauthorization, the Clean Water Act.

I say this because on this day, 123 years ago, President Grant signed into law a bill that has perhaps created more environmental disasters than any other single measure.

The law he signed has left us with a legacy of acidified rivers and streams, devoid of aquatic life, running shades of orange and red.

A law that has left us with a legacy of mammoth open pits that serve as toxic swimming pools for migrating birds.

A law that has left us with a legacy of cyanide laced rock and debris, a ticking timebomb for future generations.

In short, a law that has given rise to more Superfund sites due to the activities it endorses than has any other type of activity.

This activity is hardrock mining, for minerals such as gold and silver, on Federal lands in the Western States. And the law is known as the mining law of 1872.

So today, on its 123d anniversary, we find ourselves considering another bill that if enacted promises to cause further environmental degradation and depravation.

I say this because the pending legislation represents a direct assault on the goals of the Clean Water Act.

Make no mistake about it, these are goals which are widely supported by the citizens of this country.

Moreover, the pending bill even goes so far as to significantly roll-back the progress that has already been made in achieving water quality.

And it does so for no particular reason at all.

In the Appalachian Region of this country—where we do not have hardrock mining under the mining law of 1872, but rather live on a daily basis with the environmental, health and safety threats of past coal mining practices—in many places we too have acidified rivers and streams running those shades of orange and red.

For example, the Cheat River in West Virginia, once a prime destination of whitewater rafting enthusiasts, today is so acidic that its water irritates the eyes and skin of anyone who dares traverse its rapids.

Our loss is not only the aquatic life that once inhabited parts of this river, but a healthy amount of revenue from tourism.

But rather than seek to promote the rehabilitation of this river, rather than seek to require that its designated water quality standards are met, the pending legislation takes the position that if something is polluted, well, it just might as well stay polluted.

And it does so by gutting the NPDES process, creating countless loopholes and waivers for point-source pollutants.

It does so by allowing effluent limitations for point sources of pollution to be based on new, weaker standards.

It does so by repealing the entire stormwater permit program, and by hampering efforts to control nonpoint source pollution.

And it does so by attacking the very basis for the promulgation of water quality standards, allowing non-scientific, arbitrary and capricious factors to be used in standard setting.

No Member from the Appalachian region should be able to vote for this bill.

And I would submit that those of our constituents who live with the ravages of mining, whether it be hardrock or coal, simply did not elect us to come up here and endorse the continued contamination of their water sources: The rivers, the streams, the groundwater that serves as the very lifeblood of our natural environment.

Finally, on the question of wetlands, I think all of us agree that something must be done to provide relief from a permitting process that has become a bureaucratic nightmare.

Yet, I do not believe that the majority of Americans want to see over 80 percent of our Nation's wetlands destroyed as could occur under the pending measure.

This does not constitute responsible wetlands reform, and, it would have far-reaching consequences.

For instance, I have been advised that this legislation would significantly reduce duck populations and diminish prospects for future duck-hunting seasons.

Obviously, ducks require duck habitat to survive, and that habitat—wetlands—would be seriously threatened by the pending legislation. This is something of concern to sportsmen and women throughout America, and I know it is a matter of great concern to sporting groups in my State of West Virginia.

For these, and many other reasons, I urge this body to reject the pending measure.

Mr. HAYES. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. LAUGHLIN], one of the founding coalition members.

Mr. LAUGHLIN. Mr. Chairman, I first want to thank the distinguished chairman of our committee for turning this bill into a truly bipartisan bill, and I commend our last chairman, the gentleman from California [Mr. MINETA], for tying to work with us in the last Congress to pass a clear water bill.

But let me set the record straight about the we-and-the-they and the special interests. Half the Democrats on the Transportation Infrastructure Committee have supported this bill, not three or four, not a couple from the South, not a couple of boll weevils, 50 percent, have supported this.

Mr. Chairman, I want to rise in support of the bill and encourage the continuation of the bipartisan support.

Not only do I support the bill, I want to address a focus on the nonpoint source pollution provisions, especially as they relate to agriculture. Too often we have tried to clean up the water of America by saying it is agriculture's fault, and when we come to cleaning up, look in the last few years, we have put over $60 billion into the point source, yet we put less than $1 billion into nonpoint source, and we have tried to tell agriculture across America, "You have got to do it by these rules," when in fact agriculture in one part of the country has a different focus and a different set of rules and a different set of criteria, and we cannot clean up the agricultural lands of America simply by having one set of rules that fit all.

In fact, it is farmers like Harley Savage, Steve Ballas, and other farmers who should have the ability to do what they know how best to do. They cannot produce a crop with dirty water, even though there are some in my party that want to say this is a dirty water bill.

But the farmers of America cannot produce what they do better than any industry in America, and that is to outproduce the rest of the world in producing their products, whether it is cotton, corn, rice, poultry, beef, or any other agricultural product, and we need to give them the flexibility to do what they do best and to make sure that they continue, unlike some big cities.

The agricultural community is not dirtying the water to the degree that they are given the blame.

So I urge we implement and pass this bill so the agricultural community can do the implementation with flexibility to ensure that they continue giving us the clean water that all of us, whether we are from the rural areas, from the cities, whether we are Democrats or Republicans, we not only deserve but we want and we strive to achieve.

So this is not a we-they bill. I urge support of 961, and I wanted at this point to thank the gentleman from Louisiana [Mr. HAYES] for his great leadership in ensuring that this is a bipartisan bill.

Mr. SHUSTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from New Jersey [Mr. SAXTON].

Mr. SAXTON. Mr. Chairman, I thank the chairman for yielding me this time.

I just wanted to remark there has been much said here today about the economic implications, whether they be good or bad, of this attempt to change the Clean Water Act as it currently exists.

I would just like to say if you represent a coastal State and if you look at the provisions of this bill as it stands today and if you think that is good for your economy, then you should have spent the years of the middle 1980's with me in New Jersey or with the Representatives of Long Island when water was dirty. Those were the dirty water days. And we got past them.

If you think that doing damage to the wetlands provisions as they exist today, in removing 90 percent of the wetlands in my home State from the rolls of wetlands, if you think that is good for my economy, then you should vote for this bill.

If you think it is good for the economy to gut the CZMA provisions that pertain to nonpoint source pollution, I do not think it is, but if you think it is, then you should vote for this bill.

I would just say that the Coastal States Association does not think that is good, because we have adopted their provisions, and we have done that in the name of the economy. If you think that doing damage to the storm water discharge permitting process, as it happens in this bill, is good for the economy of coastal States, then you should vote for this bill. But I cannot do that, because I know, having lived through the years of the middle 1980's in New Jersey and what happened on Long island, that is not good for the economy.

So if you are concerned about the economy of the coastal areas in this United States, whether it be in Maine, Massachusetts, Rhode Island, New Hampshire, New York, New Jersey, Maryland, or Virginia or the Carolinas, I am not so sure about Georgia; I have never been there, or Florida or the Gulf States or California or Oregon or Wisconsin, if you are not concerned about the economic implications of this bill, then you have not observed what has gone on in those States that have developed dirty water climates.

In the summers of 1987 and 1988, for example, in New Jersey, people were afraid to go to the ocean, afraid to go in the water. They were afraid to take vacations in those kinds of places. So that is our economy, and this bill does damage to it.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to our very fine colleague, the gentlewoman from Connecticut [Ms. DELAURO].

Ms. DELAURO. Mr. Chairman, I rise in strong opposition to H.R. 961, the Clean Water Amendments of 1995. This bill would roll back decades of progress in cleaning up our rivers, lakes, and coastal waters, and it threatens the fragile ecosystems of our Nation's wetlands.

This bill has rightly been called a polluters' bill of rights. Special interests representing some of our Nation's largest polluters wrote this bill, so it is not surprising that it is riddled with custom-made loopholes to let industries pollute.

The bill would increase from just 5 to 70,000 the number of industrial pollutants that could be dumped into our Nation's waterways. It would open up our Nation's most fragile wetlands to development, including more than half of all the wetlands in my home State of Connecticut.

This bill poses a threat to our safe drinking water and to the rivers, streams, and lakes in which we swim and fish.

My constituents along Long Island Sound would be especially harmed by provisions of this bill repealing efforts to clean up our coastal waters. Our coast protection program has proven to be true—that good environmental policy is good economic policy. Clean coastal waters generate billions of dollars in tourism revenue, creates jobs in fishing and other industries, and provide numerous recreational activities.

Connecticut's Coastal Zone Management Program has made great strides at cleaning up the Long Island Sound. It has successfully restored over 1,500 acres of critical tidal wetlands. From 1991 to 1993, the number of beach closings along Long Island Sound was reduced from 292 to 174. But we clearly have more work to do. More than 25 percent of Long Island Sound's beaches still are chronically closed due to pathogen contamination. We need policies and financial resources to continue our progress, not reverse them as this bill would do.

I look forward to supporting the Boehlert-Saxton-Roemer substitute because it preserves our coastal cleanup effort, it takes a more reasonable approach to wetland protection, and closes the polluter loopholes of H.R. 961. I am grateful that the substitute provides strong support for the estuary protection goals of H.R. 1438, the Water Pollution Control and Estuary Protection Act introduced by my colleague from New York, Ms. Lowey, and myself.

The negative impact of H.R. 961 is immeasurable. It is bad news for everyone, except for those industries that will enjoy numerous loopholes and waivers. I urge my colleagues to join me in voting against this bad bill.

□ 1430

Mr. HAYES. Mr. Chairman, I yield 2 minutes to the gentlewoman from Missouri [Ms. DANNER].

Ms. DANNER. Mr. Chairman, I rise in support of H.R. 961 which maintains and builds on the current safeguards in place and complements the needs of States for flexibility. Those directly responsible for water quality in our communities, such as the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors, support H.R. 961 because it makes environmental benefit a primary focus of H.R. 961 and establishes a program that Congress can support in a truly bipartisan approach to solving our Nation's pollution dilemmas.

Let me read just one sentence from a letter that we have received from the presidents of respectively the National Association of Counties, National League of Cities and the U.S. Conference of Mayors, not the Members of Congress, but members who represent our constituency across the United States. Charges, and I quote exactly, charges that H.R. 961 rolls back environmental protection and that it guts the Clean Water Act are totally unfounded. The measure restores common sense to this unaffordable and undoable mandate.

Remember, my colleagues, we have passed legislation here to do away with unfunded mandates. The people that represent our constituents, as well as ourselves, ask us to recognize unfunded mandates as a real problem. I urge each of my colleagues to support H.R. 961 and to follow the discretion of the chairman and the full Committee on Transportation and Infrastructure by retaining the allotment formula in the bill and opposing any efforts to change the formula.

Mr. Chairman, I want to congratulate Chairman SHUSTER and the entire Transportation and Infrastructure Committee staff for their diligence and exemplary work on H.R. 961.

Mr. Chairman, I rise today in strong support of H.R. 961, the Clean Water Act amendments of 1995 which maintains and builds on the current safeguards in place in our system and complements the State needs for more flexibility.

Those directly responsible for water quality in our communities—such as the National Association of Counties, the National League of Cities and the U.S. Conference of Mayors support H.R. 961 because it makes environmental benefit a primary focus of H.R. 961 and establishes a program that Congress can support in a truly bipartisan approach to solving our Nation's pollution dilemmas.

In a letter submitted from the groups I previously mentioned they said and I quote:

> Charges that H.R. 961 rolls back environmental protection and that it guts the Clean Water Act, are totally unfounded. The measure restores common sense to this unaffordable and undoable mandate.

I urge each of my colleagues to support H.R,. 961 and to follow the discretion of Chairman and the full Transportation and Infrastructure Committee by retaining the allotment formula in the bill and opposing any efforts to change the formula.

I yield back the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Maryland [Mr. GILCHREST].

Mr. GILCHREST. Mr. Chairman, I thank the gentleman for yielding.

If I could just have a couple of seconds to give the audience a history lesson. Late in the 1500's we all remember Galileo, and he said at that time he was trying to educate people that the sun was the center of the solar system. Well the Pope heard that, Pope Urban VIII, the head of the early Roman Empire, and he said, if Galileo repeats that comment, the sun is the center of the solar system, he will have his arms and legs dislocated.

Mr. Chairman, I want to put everybody's mind at ease. I do not fear that my arms will be dislocated by making a comment about the provision in this Clean Water Act taking away wetlands, but by the Pope telling that to Galileo it made no difference. The sun was still the center of the solar system. In this legislation this will not be a wetland.

Now we can say anything we want about wetlands. We can describe them any way we want to describe them. But that does not change the way nature works, and this type of filtration system is absolutely essential if we are going to have any productive coastal fishery, if we are going to have any clean water.

This, my colleagues, regardless of what the bill says, is a wetland.

Mr. MINETA. Mr. Chairman, I yield 1 minute to the gentleman from San Diego, CA [Mr. FILNER], a very fine member of our committee on Transportation and Infrastructure.

Mr. FILNER. Mr. Chairman, I thank the gentleman for yielding, but more importantly I thank the gentleman for his tireless efforts on behalf of protecting our environment. I say to him, "Mr. MINETA, we may lose today's battle, but under your leadership I'm confident we're going to be back, and we will win the long-range war."

Mr. Chairman and colleagues, I rise today during this debate to urge my colleagues not to turn our back on the health and safety of Americans and to, once again, reassure my constituents in San Diego that they will not have to spend billions for an unnecessary sewage facility. San Diego is assured to regulatory relief with either of the major alternatives on the floor, but we must also be sure that we can fish and swim in San Diego's rivers, lakes, and beaches.

The critical questions that San Diegans must ask themselves about these bills before us is, will I have clean water to drink, will I have a clean beach to swim at, and will I get relief from the multi-billion-dollar secondary treatment boondoggle? With the Boehlert substitute, which I am supporting, the answers are "yes" to safe drinking water, "yes" to clean beaches, and "yes" to relief from increased sewage bills. I cannot support any bill that purports to help San Diego on the one hand and destroys the safety of our drinking water and beaches on the other.

Mr. HAYES. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. TAUZIN].

Mr. TAUZIN. Mr. Chairman, I thank the gentleman for yielding, and I particularly want to thank the chairman of the committee, the gentleman from Pennsylvania [Mr. SHUSTER], for bringing this bill to the floor, and I particularly want to pay a great debt of gratitude, I hope, on behalf of this entire House for the efforts, the long-standing efforts that have been made by my colleague and friend, the gentleman from Louisiana [Mr. HAYES], in this effort that has finally reached the floor to reform the wetland laws of America and create some sound, sensible regulations of wetlands in America combined with the right of property owners to be reimbursed when their property is taken for these regulatory purposes.

My colleagues, one of my colleagues from California rose earlier today to complain about lobbyists' hands in the writing of this bill. Let me set the record straight. This bill, the reforms have long been on this table, not this year when the new majority came to town. These reforms have long been on the table, never brought to the floor of this House unfortunately, but long on the table, drafted in part by the efforts, personal efforts of the gentleman from Louisiana [Mr. HAYES], the gentleman from Texas [Mr. LAUGHLIN], many other Members of this body who have urged this House to consider these amendments for many, many years when the Democratic Party was in the majority.

I want to remind my colleagues from California that it was at a meeting with lobbyists of the radical environmental groups in this town on March 4, 1992, with some Members of this House, that a decision was made then to kill the holy trinity, "unholy trinity" they called it, ideas called property rights, unfunded mandates and the risk assessment cost-benefit analysis regulatory reform. It was that link, that collusion between the radical environmental left and Members of this House that prevented this bill, these ideas, from ever getting to the floor.

Let me finally make a point. I say to my colleagues, this bill is not just about pollution and clean water. This bill is also about land regulations and activities that are not polluting activities, activities like building a home, activities like forming your property, activities like simply digging a drainage ditch on your property so it drains properly, nonpolluting activities that do not create nuisances for anybody, that have nothing to do with violations of local zoning laws, that simply have to do with the right of a person to use his property for the purposes he intended it for, perhaps to cut a tree for timber purposes, to grow some corn for agricultural purposes, perhaps just to build a house for that son or daughter on the farm so that they can live close to their parents. Those activities are regulated as land-regulated activities under this clean water bill in the guise of wetlands protection, and so when we discuss this bill, and you hear talk about pollution and this bill being only a bill dealing with pollution, remember this is land regulation, too, of nonpolluting activities.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Chairman, I am pleased to support this reauthorization of the Clean Water Act. It allows us to protect our precious waterways in a cost-effective manner.

I have a particular interest in the Great Lakes provisions in this bill. Lake Erie is a tremendous asset to my home State of Ohio. States like Ohio want to be able to protect this resource in a way that makes regulatory and financial sense.

The language in this bill gives them the flexibility to do exactly that, and we will achieve more real progress than we would get if the EPA's Great Lakes Water Quality Initiative was imposed as a rigid, mandatory regulation.

Municipalities in my district have been concerned about the costly provisions of the G–L–I. Wastewater treatment plants are being told to reduce the discharge of mercury to a level lower than what naturally occurs in rainwater. That amounts to spending millions of dollars to remove a substance that is put back into the Great Lakes every time it rains.

Even if implemented as written, there is no guarantee that the G–L–I will lead to the lifting of a single fish advisory or the opening of an additional mile of shoreline for unrestricted use.

Mr. Chairman, this is a strong bill. Let us support it.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentlewoman from Missouri [Ms. MCCARTHY], a member of the Committee on Science and the Committee on Small Business, who has been contributing a lot to this effort.

Ms. MCCARTHY. Mr. Chairman, I thank the gentleman from California [Mr. MINETA] for yielding this time to me and for his efforts on behalf of sound legislation.

Mr. Chairman, I rise today to express my concerns with H.R. 961, the Clean Water Amendments of 1995. My State of Missouri is a land of mighty rivers, and clean water is a gift from our ancestors and our legacy to our children.

H.R. 961 would mean the end of our coordinated efforts to improve the

quality of this national resource. The strange patchwork of waivers and credits envisioned by this bill would allow polluters to choose the way they will diminish our water quality.

Mr. Chairman, the nine States in the Midwest which suffered devastating floods in 1993, including Missouri, are working to expand wetlands that will help absorb the shock of future flooding.

The National Conference of State Legislatures agrees that title VIII of this bill will cripple those efforts, expose Midwesterners to greater risk of flooding, and expose U.S. taxpayers to greater risk of having to pay for future flood cleanups.

While the funding formula currently in the legislation would provide for additional pollution run-off funds for Missouri, H.R. 961 does not explain to Missourians how to pay for new treatment plants when the lifeblood of their State, the great Missouri and Mississippi Rivers, run thick once again with pollution. It does not explain how to pay for new homes and businesses when the rivers overflow their banks.

I hope that as we debate amendments to H.R. 961 we will focus on quality of life, and that includes not only new jobs but a clean environment. I hope, too, that we adopt amendments to strike a proper balance between increased State authority and preservation of minimum Federal standards.

These goals are compatible; the Clean Water Act has proven that time and again.

Mr. SHUSTER. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, my colleagues, the debate we begin today on the Clean Water Act is quite simply the test of whether the center can hold. We are faced on the one hand by the clean water statute that, despite its many strengths, has clear flaws that must be remedied.

□ 1445

We are confronted, on the other hand, with a proposal that instead of simply repairing those flaws, rolls back existing protections, imperiling our rivers, lakes, and coastal waters.

Clearly, neither the status quo nor the proposed rewrite of the Clean Water Act are acceptable alternatives. What is needed is an approach that preserves our water resources without causing undue economic hardship. The gentleman from New Jersey [Mr. SAXTON], the gentleman from Indiana [Mr. ROEMER], and I will offer a substitute later today that offers just such an approach.

What we have done is to take the best proposals being offered around town and combine them into one bill. Our litmus test has not been ideology, but practical input, which proposal was the most likely to reasonably protect our Nation's waters.

For example, we have adopted the National Governors' Association proposal for wetlands protection, a solid middle ground position. H.R. 961, on the other hand, would allow the wholesale destruction of more than half the Nation's wetlands. That is not my opinion, that is what we learned from the scientists. We have just had a report yesterday from the National Academy of Sciences. That would mean increased flooding, less fresh water, and a decline in the fishing and tourism industries.

Current law is too restrictive, and administratively burdensome. The Governors' proposal, which gives States a greater say over wetlands protection, is a sensible approach. It is also a cheaper approach, eliminating the need for a large Federal bureaucracy and a new entitlement through the takings provisions.

Similarly, we have adopted the Coastal States Organization's proposal on coastal nonpoint pollution, which gives States a greater say over how to meet environmental requirements. H.R. 961 would repeal coastal zone protections, increasing the likelihood that beaches will have to be closed to the public, 10,000 were closed last year, and that runoff pollution will close commercial fisheries, threatening a $55 billion industry.

The Coastal States Organization, a group of 30 Governors, has endorsed this provision of our substitute, because we amend the Clean Water Act to eliminate its excesses while retaining its protections. Let me stress that, we eliminate its excesses while retaining its protections. This is an approach we have taken throughout the bill, shopping around for the most sensible, rational approach, eliminating the bureaucracy and redtape of current law, which preventing the environmental degradation of H.R. 961.

Such a centrist approach should be welcome in a country that is clearly sick of ideological warfare and hungry for solutions to our Nation's problems, a country in which 76 percent of the American people want us to do more to protect our Nation's waters, but are skeptical of overbearing Government.

Perhaps that is why our substitute has broad bipartisan support. I look forward to the debate we will have this afternoon, because we will pass this substitute if good sense is allowed to triumph over ideology on both ends of the political spectrum.

A lot of people think Republicans do not give a damn about the environment. A lot of people are wrong. Keep in mind, one person's effluent is another person's drinking water.

Finally, let me point out what the National Conference of State Legislatures has to say. Unless H.R. 961 is significantly amended during floor consideration, the National Conference of State Legislatures urges you to vote against the bill.

We have that significant amendment. We urge you to support Saxton, Boehlert, and Roemer and to oppose the committee bill.

Mr. MINETA. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. Mr. Chairman, I thank the gentleman from California for his great leadership.

Mr. Chairman, I rise today to say that H.R. 961, the Clean Water Amendments Act of 1995, as presently drafted lessens environmental protection and endangers the very quality of life of all Americans. I have been listening to the debate and, coming from local government, I know there are real concerns about storm water runoff, sewage wastewater, and certainly wetlands. But we must also listen to the EPA administrator that has criticized the bill as being unworkable.

Mr. Chairman, I hope we will come to this process with a bipartisan attitude to fix and correct, but not to eliminate. Currently the Clean Water Act is regarded as one of the most successful environmental mandates passed by Congress. Yes, some of the portions of the act may need some additional flexibility or fine-tuning, but we only have one environment, one planet Earth, and we ought not to take undue risks with it.

As for Texas, I know firsthand that the city of Houston is spending $1.3 billion to address its sanitary sewer overflow. It is important that we follow through. It is important that we continue to improve the quality of our drinking water. Let us not turn back. Let us make sure we fix, but not eliminate the Clean Water Act.

Mr. HAYES. Mr. Chairman, I yield 2½ minutes to the distinguished gentleman from Alaska [Mr. YOUNG].

Mr. YOUNG of Alaska. Mr. Chairman, I rise in strong support of H.R. 961. As chairman of the Committee on Resources, we had joint jurisdiction over this legislation. But also being ranking on the committee of the gentleman from Pennsylvania [Mr. SHUSTER], the chairman of the Committee on Transportation and Infrastructure, I watched the building of this bill and watched what he has been able to do, and our committee, full committee, with the exception of two people, fully agreed with what we are attempting to do here, and that is to have clean water.

We have to keep in mind what has been said prior to some of the other speakers about how bad this bill is. This bill achieves many things, but one of the main things that it achieves is clean water realistically. It requires clean water as it should be without the regulations, without the dominance of government interference. It is a needed bill. It has to occur.

One of the things I have heard from most of the Governors around the country is whatever happens, you must review and revamp the Clean Water Act so we can make it apply to our communities and stop making us waste money on testing that is unnecessary, meeting requirements that are unnecessary. And in Alaska alone, which I will have an amendment later on, the biggest city in Alaska had to add fish guts to make sure we met the standards for the particular amount in the water that comes out at the end of the effluent. We had pure water. I could drink it. To say we want to stay with the present bill, the regulations that should never have been applied, is absolutely ludicrous.

More than that, in this bill there is a provision which I hope everybody is listening. The one provision from this bill that should draw your attention because it affects every State in the Union is the wetlands provision.

You have seen what the wetlands have done to this country, how it has been implemented and enforced by a Federal Government without any jurisdiction of written law, other than a dredging law through regulatory law, where they can tell my State of Alaska that all of your land is wet. You have no longer a right to build or take and construct schools or do things good for your community because we have decided it is wet, without compensation. They have put inroads into our ability to take and produce.

Mr. Chairman, I suggest we also have to keep in mind this Congress in 1971 gave 44 million acres of land to the Alaskan natives, the American Eskimos in Alaska. We gave that land to them as a commitment to them for their economic and social well-being. And what do we do under the wetlands provision? We take it away, because we tell them under the Federal control it is 98 percent wetlands.

You call that justice? I am saying it is time we support this bill. The gentleman from Pennsylvania [Mr. SHUSTER] and the committee have done an excellent job. When I hear members of the committee say this is a bad bill, I say shame on you. This is a good bill that should be passed.

Mr. MINETA. Mr. Chairman, I yield 1 minute to the gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, today's young people think I am making a joke when I tell them about a river catching fire. That actually happened to the Cuyahoga in Ohio, it was so polluted with industrial wastes and inflammable solvents. In Oregon 3 million residents take for granted the fact they can swim, fish, and even drink Willamette River water. Well, the Willamette River was more like an open sewer in the mid 1960's than it was a pristine river.

They say you cannot turn back the clock. Who would want to turn back the clock to those bad old days? Who indeed? Well, watch for the votes on this bill. A vote for this bill is a vote to turn back the country to the days when our rivers were more like open sewers and industrial cesspools than they were precious resources.

Mr. SHUSTER. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. DELAY], the distinguished majority whip.

Mr. DELAY. Mr. Chairman, in reference to the previous speaker, fear, fear, fear. That is all we have to offer, is fear. We are here to rise in support of the Clean Water Act that brings some common sense, good science, and responsibility, adding much needed reforms to the Clean Water Act, bringing a responsible approach to the Clean Water Act.

I just want to point out a situation in my own district. The city of Lake Jackson, TX, is no stranger to the current tangle of regulatory policies when it comes to wetlands.

Mayor Doris Williams has led that effort since the late eighties to see that the city be allowed to construct a public golf course, despite the U.S. Corps of Engineers' objections that Lake Jackson had not adequately defined all of its jurisdictional wetlands.

You know what that is in this case? Footprints of cows. They had to go out and map every footprint from a cow on these 400 acres of property.

This small city purchased 400 acres of property, and after 4 years of working with regulatory agencies at a cost of well over $100,000, a lot of money to this small city, the city is only now eligible to submit an application to the U.S. Corps of Engineers for an individual 404 permit to construct a public golf course.

There is no guarantee at this time that a permit will be awarded, despite the city's significant efforts and investment. This bill brings the promise of reason and relief to communities such as Lake Jackson.

The time has come for sensible environmental reform. The Clean Water Act Amendments of 1995 provides for risk-based regulation and requires the EPA to subject its mandates to both risk assessment and cost-benefit analysis. It offers flexibility to the States in their efforts to determine how each may best comply with Federal law and contribute to long-term pollution control. Support the bill.

Mr. MINETA. Mr. Chairman, I yield 1 minute to the gentleman from Rhode Island, [Mr. REED].

Mr. REED. Mr. Chairman, I rise in opposition to H.R. 961. The Clean Water Act has been instrumental in cleaning up our waters and protecting our environment. H.R. 961, if enacted, would devastate Rhode Island, both its environment and, just as importantly, its economy. We depend upon a clean Narragansett Bay to support not only environmental activities, but also our economy.

In 1989, $42 million was generated by our commercial fishing industry. $11 million was generated by our shellfishing industry. If we lose the Clean Water Act, we will lose a lot of these profits and a lot of the jobs associated with them.

We depend on tourism: $146 million in 1989 for marine recreation activities; $637 million in 1989 for the marine industry in general. Without the Clean Water Act, we will not be able to realize this type of economic activity.

We have to support a strong Clean Water Act. This bill does not do that. We also have to provide the States the resources through the revolving fund to provide cleanup until Rhode Island and elsewhere. Again, this act does not do this. Mr. Chairman, we should reject this provision and support a Clean Water Act.

Mr. HAYES. Mr. Chairman, I yield 1½ minutes to the gentleman from Texas [Mr. PETE GEREN], a former member of the committee, now on temporary leave, who helped enormously on these issues last year.

Mr. PETE GEREN of Texas. Mr. Chairman, I rise in strong support of this very important legislation. I want to commend my colleague, the gentleman from Louisiana [Mr. HAYES], and the chairman, the gentleman from Pennsylvania [Mr. SHUSTER], for bringing us to where we are today. A lot of work over a lot of years has made this day possible. The legislation we have today brings long overdue balance back to the implementation of this most important piece of environmental legislation.

I would like to talk about a specific provision in the bill, the risk assessment and the cost benefit analysis provisions in H.R. 961. These provisions will result in greater improvements in water quality because they help to focus the Clean Water Act's requirements on significant risk reduction in a manner that provides the greatest amount of environmental benefit for the costs expended.

Mr. Chairman, we have reached the point in every area of this Government where we cannot afford to waste a dime. It is only through cost-benefit analysis and risk assessment that we can make sure that the scarce dollars are targeted for the most important environmental initiatives.

For 20 years the Clean Water Act has been addressing the problems of water quality in this country. The act imposed technology that forced requirements on industry and municipalities and imposed additional water quality controls where technology controls were not enough. These have been successful in cleaning up our Nation's

water. It is now time for more precision in order to better focus the resources that are put in play by this act.

Mr. Chairman, I urge my colleagues to support H.R. 961 and commend those who have worked so hard to make this day possible.

□ 1500

The CHAIRMAN. The gentleman from Pennsylvania [Mr. SHUSTER] has 11½ minutes remaining, the gentleman from California [Mr. MINETA] has 17 minutes remaining, and the gentleman from Louisiana [Mr. HAYES] has 7 minutes remaining.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. NADLER], a member of our committee.

Mr. NADLER. Mr. Chairman, the Clean Water Act, since 1972 has been one of the most successful pieces of legislation ever enacted by this Congress. Yet many Members of this body are willing to throw away all the advances we have made.

During the first 100 days of this Congress, we have heard a lot of talk of Government waste and commonsense reform. Apparently this talk applied only to legislation in the first 100 days.

Two years ago, for example, we ordered a study by the National Academy of Sciences of wetlands to define just what a wetland is. The findings of that study were released just yesterday.

What use has H.R. 961 made of this information? None. The findings of this multimillion dollar study are not reflected in this bill at all. We all knew the study results were promised for May, but the authors of H.R. 961 could not wait. Apparently whatever is driving this bill, it is not scientific information.

The Nation's wetlands, of course, provide a vital source of filtration for our drinking water. But this bill attempts to redefine wetlands. H.R. 961 provides that only 20 percent of the wetlands in the region may be deemed a critical wetland. That leaves 80 percent of the wetlands open for development. Why is only 20 percent of our wetlands going to be protected? This arbitrary standard will deprive 80 percent of our wetlands of any protection and will deprive us of the benefits of that 80 percent.

In New York City we have some of the cleanest drinking water in the United States. We have accomplished this not by building a massive filtration system but by protecting the integrity of our watershed and letting nature do its job. This bill throws out or makes voluntary many of the regulations that protect our watershed. If this dirty water bill passes, it is likely that New York City will have to spend between $6 and $8 billion to build a filtration system to imitate what nature has already accomplished; is that right?

Mr. Chairman, this is not fiscal conservatism. It is not anything we should do.

Mr. HAYES. Mr. Chairman, I reserve the balance of my time.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, I rise today in strong opposition to H.R. 961 and hope all our colleagues know how lucky California is to have the leadership of the gentleman from California [Mr. MINETA].

Nowhere will the bill's assault on clean water be felt more strongly than in my district. H.R. 961's many loopholes, waivers and exemptions would allow partially treated sewage to be dumped into Santa Monica Bay, a body of water only now recovering from years of neglect and pollution.

The EPA has reviewed the ocean discharging provisions in H.R. 961 and has stated that they are neither scientifically nor environmentally justifiable and could result in harm to the people who depend upon the oceans and coasts for their livelihood and enjoyment.

While some claim that economics necessitates granting sewage treatment exemptions, dirtier and unsafe oceans will actually hurt southern California's economy by keeping tourists away from our beaches.

The bill does not just relax sewage treatment standards, it also dismantles the storm water and wetlands programs. Such disdain for these important clean water safeguards is especially troubling in Los Angeles where storm water or nonpoint source pollution is now recognized as a major threat to the health of Santa Monica Bay.

Mr. Chairman, over the past 20 years, the Clean Water Act has been one of our most effective and most popular environmental statutes. In less than 20 weeks, the House will have effectively reversed this progress, if it passes H.R. 961. I urge my colleagues to stand up for clean water and to vote against this dirty water bill.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Illinois [Mr. EWING].

Mr. EWING. Mr. Chairman, I rise today in strong support of H.R. 961, the Clean Water Amendments of 1995, and urge my colleagues to support the bill as reported by the committee and to reject weakening amendments which seek to gut the bill and preserve the present regulatory status quo.

I also want to thank the gentleman from Pennsylvania [Mr. SHUSTER] for his strong leadership and commitment to clean water.

I would make the points that this bill is very important because it requires the EPA to subject its mandates and regulations to a risk assessment. The regulations must be performance-based. Market incentives can be used to achieve environmental goals. Environmental regulation should be based on the best science, and it is a major victory giving States and local governments control over runoff.

Finally, let me say that it ends the wetlands regulations.

Mr. Chairman, I rise today in strong support of H.R. 961, the Clean Water Amendments of 1995, and urge my colleagues to support the bill, as reported from committee, and to reject weakening amendments which seek to gut the bill and preserve the present regulatory status quo. I also want to thank Chairman SHUSTER for his strong leadership and commitment to Clean Water Act reform.

For the benefit of my colleagues who do not serve on the Transportation and Infrastructure Committee, and who may be confused by the rhetoric of the opponents of H.R. 961, I would like to take a few moments to set the record straight.

H.R. 961 does not weaken the existing Clean Water Act. The committee's bill preserves the same water quality standards as the original Clean Water Act, it authorizes $3 billion annually for water quality programs, and it restores the Founding Father's notion of federalism by freeing State and local governments from one-size-fits-all Federal mandates and empowering them with the flexibility to meet each State's unique regional needs and water quality challenges.

Make no mistake, opponents of H.R. 961 do not trust State and local officials to do what is right for their communities. They only trust Federal Government bureaucrats to make responsible decisions. I do not agree with this type of big government arrogance. The farmers and landowners in my congressional district have had enough of unnecessary interference and costly mandates from Federal bureaucrats.

In addition to stressing State and local management solutions, H.R. 961 is consistent with the regulatory reform themes contained in the Republican Contract With America. H.R. 961 adopts a commonsense approach which requires EPA to complete a regulatory cost-benefit analysis before issuing new rules. The bill also protects States and localities from unfunded Federal mandates, and landowners will receive compensation for regulatory takings of private property. Some of these commonsense provisions have been in law for over a decade, but H.R. 961 finally enforces them.

H.R. 961 applies reason and consistency to the Federal wetlands permitting process. By consolidating the section 404 permitting process under jurisdiction of the U.S. Army Corps of Engineers, landowners will not have to waste their resources and spend months, or sometimes years, trying to obtain the necessary permits from both EPA and the Army Corps. Title VIII of the bill outlines reasonable wetlands delineation standards, and represents sound, fair, and workable wetlands policy.

Arguments that the House should refrain from passing wetlands delineation standards until the National Academy of Sciences study is complete, only reflect H.R. 961's opponents' desire to leave the current, fragmented, and overly burdensome wetlands permitting process in place. Congress has patiently waited for over 19 months from the time the NAS

study was originally due, and the results of the study will still not resolve our Nation's wetlands permitting difficulties. Only the language in title VIII of H.R. 961 affirmatively resolves the wetlands permitting problem.

H.R. 961 also prescribes progressive solutions to regulation of nonpoint source pollution and stormwater permitting. Indeed, common sense dictates that there is no need to require permits for stormwater discharge that does not come into contact with pollutants. Yet most importantly, the bill recognizes that voluntary compliance incentives are often more effective than punitive measures.

My colleagues, programmatic change is often met with some resistance, as illustrated by supporters of the status quo who have been critical of many provisions in this legislation. But careful examination of H.R. 961 reveals a bill that strikes a reasoned balance between funding realities and the national goals of the Clean Water Act. It is time to abandon the outdated logic which claims the Federal Government always knows what is best for States and localities, and to give States and the regulated community the flexibility to try new and innovative approaches to water pollution control.

For these reasons, I urge my colleagues to reject the alarmist rhetoric of the other side, and to support H.R. 961.

Mr. SHUSTER. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Colorado [Mr. SCHAEFER].

Mr. SCHAEFER. Mr. Chairman, I rise in strong support of the legislation before us.

Mr. Chairman, I rise today in strong support of the Transportation and Infrastructure Committee's efforts to improve the Clean Water Act. I applaud Chairman SHUSTER and all of the members of the committee who worked on this proposal.

There is no doubt that America enjoys extremely clean water. However, the problem with the current statute is not the intent: maintaining clean water is an admirable and necessary goal. The problem is its rigid standards. It imposes Federal mandates without regard to individual State and local circumstances and, ironically, it exempts Federal facilities from compliance. H.R. 961 goes a long way toward correcting these flaws.

State and local water systems as well as businesses are crying for relief from the current Federal standards. The one-size-fits-all attitude has created nightmare compliance scenarios for these entities. The clean water Americans currently enjoy will not be sacrificed. Rather, the Federal Government will relinquish its stranglehold and allow State and local officials to determine how to best achieve this worthy goal.

Most importantly, H.R. 961 brings the Federal Government itself into compliance with Clean Water Act standards. Currently, the Federal Government is allowed to taint the very water it claims to protect, all under the guise of sovereign immunity.

H.R. 961 would end this double standard and ensure full compliance at all Federal facilities. At last, communities that happen to be near polluted Federal lands will benefit from the clean water all other citizens enjoy.

Mr. Chairman, I urge all my colleagues to support the Transportation and Infrastructure Committee's thoughtful efforts to improve clean water regulation and its endeavor to end Federal exemption from environmental laws.

Mr. MINETA. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. FARR].

Mr. FARR. Mr. Chairman, I rise today in strong opposition to H.R. 961 and urge my colleagues to reject this overreaching piece of legislation. The Clean Water Act is really one of our Nation's most effective environmental laws, one of our Nation's most effective environmental laws.

In 1972, the year of the Clean Water Act's birth, only one our of three rivers are clean enough for people to fish or swim. Now, the EPA estimates that over 60 percent of our waters are clean enough for fishing and swimming.

I am the first to acknowledge that it is not perfect, and that sometimes it imposes rigid and unneeded requirements that it need not do. Unfortunately, the bill as written fails to target what is broken in the Clean Water Act and build on what works. Instead it throws out good along with the bad.

H.R. 961 would remove 60 percent of our Nation's remaining wetlands from any level of protection. It would weaken standards that protect our waters from industrial pollution by creating dozens of waivers and loopholes. And frankly, it would repeal the entire coastal zone nonpoint source pollution program which on the coastal counties of California would severely hamper the State of California's efforts to preserve the waters off of our coast so that they can be indeed recreational and economically viable for the fish industry.

These changes do not make environmental sense if they are going to gut the bill. And they certainly do not make any economic sense.

The drafters of H.R. 961 have created a bill that accounts for the cost of everything but the value of nothing. I have no doubt that H.R. 961 will save a great many people a great deal of money. But is this good value for future generations?

Clearly, the answer is no. Future generations will pay dearly in many ways to recover the environmental and economic damage that H.R. 961 will allow.

The best feature of the Clean Water Act is that it is a prevention program. It stops pollution before it gets into our waters. H.R. 961 would make the Clean Water Act more like the Superfund, one of the most broken environmental programs. It litigates first and cleans up later.

I urge my colleagues to support the substitute offered by the gentleman from New Jersey [Mr. SAXTON].

Mr. HAYES. Mr. Chairman, I reserve the balance of my time.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Iowa [Mr. LATHAM].

Mr. LATHAM. Mr. Chairman, I want to compliment the gentleman from Pennsylvania [Mr. SHUSTER] on bringing this great bill up. I rise today to express my strong support for H.R. 961, the Clean Water Amendments Act reauthorization.

Over the next 3 days, Members of Congress who supported the regulatory reforms of the Contract With America will have an opportunity to put those general principles into existing environmental statute. H.R. 961 restores a proper regulatory balance between Federal, State, and local governments, and it was developed with unprecedented input from the real environmental experts, men and women from local governments and water systems.

It includes individual property rights protection, risk assessment, cost-benefit analysis, and protects against unfunded mandates.

Ultimately, H.R. 961 is a choice between those who believe good government should always regulate more and those who believe government should regulate smarter.

I believe government should regulate smarter, and I encourage my colleagues to support and vote for H.R. 961.

Mr. MINETA. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from California [Mr. MINETA] has 11 minutes remaining, the gentleman from Pennsylvania [Mr. SHUSTER] has 9½ minutes remaining, and the gentleman from Louisiana [Mr. HAYES] has 7 minutes remaining.

Mr. HAYES. Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Pennsylvania [Mr. SHUSTER] has the right to close the debate.

Mr. SHUSTER. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Missouri [Mr. EMERSON].

Mr. HAYES. Mr. Chairman, I yield 1 minute to the gentleman from Missouri [Mr. EMERSON].

The CHAIRMAN. The gentleman from Missouri [Mr. EMERSON] is recognized for 3 minutes.

Mr. EMERSON. Mr. Chairman, I thank the gentlemen for yielding time to me.

Mr. Chairman, I rise today in very strong support of the Clean Water Act Amendments of 1995 and against the so-called Boehlert-Roemer substitute. Parochially, let me say that this bill has tremendous positive implications for both rural America and the critical agricultural economy that sustains these same rural communities. But this is also a very genuine bipartisan effort led by the distinguished chairman, the gentleman from Pennsylvania [Mr. SHUSTER], and I welcome this opportunity to finally address both the needs and the solutions that are the subject of this legislation.

The commonsense approach found in this bill is long overdue. I want to commend the chairman for his leadership

in bringing this bill before this body. With this being the first major piece of environmental legislation in the new Congress, I am impressed by the broad, bipartisan support behind this bill.

□ 1530

Mr. Chairman, we all agree that adequate attention must be given to preserving and protecting our environment, but I believe that the pendulum has swung way too far in obstructing the control of this Nation's private property owners over their own land. There must be an appropriate balance, and this bill restores balance. Anyone who believes that private landowners should retain reasonable control over private land as guaranteed by our Constitution should vote for this bill.

In addition, for far too long, Federal wetlands law has been the primary land management tool for any Federal agency that wants to dictate its own wetlands policy. Without congressional debate or public comment, various government agencies and departments that promulgate our wetlands rules and regulations have acted freely in holding farmers and small business owners hostage to their wetlands definition. The fact of the matter is that the contrast between pristine wetlands and a mud puddle is not distinguishable by the various Federal agencies dealing with wetlands. The approach taken in this bill resolves the ever-changing definition of what constitutes a wetland by defining them according to their value and function. This bill also provides needed reforms in the current regulatory system and directs Federal regulators to consider the value of wetlands from competing social, economic, and environmental needs.

In other words, true wetlands have to be wet. And if they are determined to be a pristine wetland, they are protected. And if they are taken by the Government, then landowners will be paid for their economic losses. It is a pretty basic concept, but one that the Federal Government has had a hard time figuring out.

The Clean Water Act Amendments of 1995 provides for voluntary, incentive-based programs in local, State, and Federal partnership to advance clean water goals with nonpoint source pollution. It also gives State and local officials the flexibility to manage and control stormwater like other forms of runoff which helps reduce the high cost of unfunded mandates. Finally, it requires the Environmental Protection Agency [EPA] to subject its mandates and regulations to risk assessment and cost benefit analysis.

For the first time in a long time, we are successfully working together at all levels of government to meet our water quality needs. We do not need straitjackets to have clean drinking water, nor should we allow Federal bureaucrats who know the least about farming or operating a small business to deem what's a wetland from their Washington offices. Through its increased flexibility, the Clean Water Amendments of 1995 benefits farmers, businesses, consumers, local and State governments, and their taxpayers.

Mr. Chairman, any last-minute reactions to derail and weaken this bipartisan effort, whether they be in the form of amendments or so-called substitutes, should be voted down. Such efforts are a breach of our Contract With America and renege on the need for smart regulation, good science, cost-effective risk reduction, and commonsense. The Washington bureaucracy and professional environmental elitists have been ramming these edicts down the throats of the American taxpayer for too long. It is time for the farmer, the rancher, and the small business owner to finally have a say in the process, and we have provided for that forum in this legislation. Vote for the Clean Water Amendments Act of 1995 and vote against any and all efforts to weaken it.

Mr. MINETA. Mr. Chairman, I am privileged to yield 4 minutes to the gentleman from Michigan [Mr. BONIOR], our distinguished minority whip.

Mr. BONIOR. Mr. Chairman, clean water is not just an issue of us versus them. It is about our health, it is about our environment, it is about a quality of life. For many of us, it is about jobs. Since 1972, the Clean Water Act has made great strides in cleaning up our waters. Today 60 percent of our waterways are clean.

I remember as a boy taking my bike, driving down to Lake St. Clair to go swimming, and seeing a sign on the beaches, on the fences by the beaches, saying "No swimming today—pollution." We have cleaned up about 60 percent of that problem. The bad news is that the remaining 40 percent of our water is still polluted.

In the past few years alone we have seen 104 people die in Milwaukee due to drinking water poisoned with cryptosporidium. In my community beaches were closed 2 months last summer, and businesses lost millions of dollars, due to water so choked off by bacteria and seaweeds that ducks could literally walk across it. If anything, we should be strengthening the Clean Water Act, not gutting it. However, the bill before us today will stop a quarter century of progress dead in its tracks.

Mr. Chairman, why do we want to make it easier to poison or lakes and our streams? Why do we want cities and factories dumping raw sewage into the same lakes and rivers we get our drinking water from? Because a few corporations and lobbyists oppose the safeguards we have now? Does anybody really believe these people are looking out for the public interest and public safety first?

In the Great Lakes region, we have seen recent stories of some mothers who ate fish from Lake Michigan during pregnancy and are finding that their children are having developmental problems. Instead of finding answers, however, some people are now suggesting that we weaken the Great Lakes water quality initiative, which was put together so painstakingly with Republicans and Democrats during the Bush administration and into this administration over the last few years.

I sure hope this is not the case, but Mr. Chairman, after all this time, can we not agree that making our waterways safe benefits us all, especially business?

When Lake St. Clair, which borders on my district, was shut down for 2 months last summer, it did not just affect the quality of life, it devastated business. Local marinas and restaurants, businesses which bring in over $1 billion each year from boaters and beachgoers, suffered losses in the millions. When we wondered how it happened, we found out that State inspections were lax, sewer overflow discharges unchecked, and in some instances, Mr. Chairman, in some cases, State permits had not been renewed in nearly 20 years.

I understand the desire to send responsibility back to the States. That is the movement we are in now at the Federal level. However, we have to strike some sense of healthy balance here. It seems to me that a bill written by lobbyists on behalf of some of America's most notorious polluters takes us exactly in the wrong direction. Therefore, Mr. Chairman, I urge my colleagues to vote for common sense, vote for clean water, vote "no" on this irresponsible bill.

The CHAIRMAN. The Chair will advise the parties of the time remaining. The gentleman from Louisiana [Mr. HAYES] has 6 minutes remaining; the gentleman from Pennsylvania [Mr. SHUSTER] has 7½ minutes remaining, and the gentleman from California [Mr. MINETA] has 7 minutes remaining.

Mr. HAYES. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Minnesota [Mr. PETERSON].

Mr. PETERSON of Minnesota. Mr. Chairman, there is a lot of misinformation floating around about this bill. I just want to briefly touch on a couple of them.

I represent a prairie pothole region up in the northern part of the United States, and there is letter that has been put out by a wildlife group that claims that there are going to be, in this bill, changes that are going to devastate these prairie pothole regions. That is absolutely not the case. The swampbuster, which is what governs most of our problems, is not even included in this bill.

Second, there is an exemption for the prairie pothole region, so clearly, this letter was written by somebody who has not read the bill and does not understand what the situation is.

The other thing that is thrown around about this bill is this is somehow or another going to allow industry to pollute. If we believe that, then we are going to believe that the EPA or

the State Environmental Protection Agency is going to allow this to happen, because in this bill, they have to sign off for these changes.

I just hope that people would read the bill before they engage in all of this rhetoric that really, in my judgment, misses the point. I ask support for the bill.

Mr. SHUSTER. Mr. Chairman, I yield 1 minute to the distinguished gentleman from Georgia [Mr. BARR].

Mr. BARR. Mr. Chairman, as I listened a few moments ago to the distinguished gentleman from Michigan [Mr. BONIOR], I was struck with something. That is, yes to his question that we have had in this country tremendous improvements in the water supply and our waterways over the last 20 years or more, but let us ask ourselves, why have we seen those changes? Why have the improvements come from? Have they come from the basic Clean Water Act that we passed over a generation ago? The answer is yes.

Have those improvements, has that cleaner water, come, though, from the numerous additional amendments, regulations, and bureaucrats that have been foisted on our communities, our businesses, and our local governments since that time? The answer to that question is no.

What this bill does, and I rise in strong support of H.R. 961, is get us back to where we ought to be, and that is with the basic legislation that is good, and yet does not saddle our communities, our business, and ultimately, the taxpayers in this country, with needless regulation that does not do any good, other than raise the cost to our people. Let us bring balance, let us bring rationality back to this process.

Mr. MINETA. Mr. Chairman, I yield 5 minutes to the gentleman from Missouri [Mr. GEPHARDT], our very distinguished minority leader.

Mr. GEPHARDT. Mr. Speaker, I rise today to urge my colleagues to defeat this bill, to let all of America know that when it comes to the water that we all drink every day, the water we use to cook, and to feed to our children, there can be no compromise, and we can allow no special interest agenda.

The fact is this so-called clean water bill is anything but clean. It rolls back decades of environmental controls designed with one purpose in mind: to make sure that the water that comes out of our faucets, the water that we swim in and bathe in, is clean and safe.

That is not a Democratic or a Republican goal. Basic health and safety, freedom from pollution and contamination, is something that knows no bound of party or politics. However, in my view, this bill serves an interest that is outside the political process. It serves the interests of industrial polluters looking to save a few pennies, even if that means contaminated water and disease for people.

If Members ask me, that is not what the American voter voted for last November: polluted drinking water, contaminated soil in which to grow good food, filthy water in which to swim.

Some will try to argue that there is no national role in clean water, that States should set their own standards. However, clean water is a national issue. My town of St. Louis, MO, gets all of its drinking water from the Mississippi River, which originates in other States. If those States allow pollution, we in St. Louis drink the consequences.

At the same time, I know that this bill will cost my State millions of dollars in lost sewage treatment funds, money that we desperately need to keep our water clean. Mr. Chairman, if we vote for this bill, we will have more than dirty water. We will have an unclean conscience. This is a bill of special interests, by the special interests, for the special interests. In my opinion, that is reason enough to vote a resounding no.

Then with our drinking water saved from the special interest assault, we can roll up our sleeves and go back to work for the people for a change. I urge Members, in the interests of having safe drinking water in our towns and villages all across this country, to defeat this bill. We can do better.

Mr. HAYES. Mr. Chairman, I yield myself the remainder of my time.

The CHAIRMAN. The gentleman from Louisiana [Mr. HAYES] is recognized for the balance of his time, a period of 5 minutes.

Mr. HAYES. Mr. Chairman, I wish the leadership in my party, and I wish my friends in the other party, could all take a short journey with me right at this instant down the mighty Mississippi River and across a marsh to a small town that many of Members would not recognize, but it is named after the gentleman in that portrait, Lafayette. I wish they could stand for a few moments in what is my home.

In the back of my home are lakes. In the back of my home are marshes. In the back of my home are cypress trees. I am quite familiar with all of them. In the back of my home are the last memories I have of the last time I saw my grandmother. In the back of my home are the footsteps still left by my father when he filmed a television commercial, so proud that his son had not only finished school, which he was never able to do because of the Depression, but had gone on to be a Congressman, which to him meant public service. The place is a piece of land, but it is inextricably tied to my family.

I wish I could take those folks to whom land is a few square feet and a high-rise apartment, to understand the boundaries and the linkages between individuals who plant it and plow it and love it, and those who believe it could be better handled by regulators who have never in all likelihood seen it, and assuredly would not understand it.

My mother still lives in that home. She cannot understand why a lake that we dug would be treated as a wetland when it was not before we did it. To her a wetland was made in the marsh by God, not dug by tractors and Caterpillars. She thinks there is a difference between the two.

My mother, who understands the marshes of Louisiana, which are indeed class A wetlands, as they are in the marshes of Maryland, cannot understand why the parking lot of a shopping center in the middle of our towns been declared by the Corps of Engineers as the jurisdictional waters of the United States, nor can I understand how anyone could represent a congressional district, with its half million people, almost anywhere and not understand that what we have in this debate is a clash of rights of individuals versus powers of Government.

I cannot imagine anyone would support a substitute that insists upon having not one, but 5 Federal agencies veto the actions of potentially 7 other Federal agencies, and want to say that this bill that does nothing but streamline and have a single stop with a single Federal agency is for special interests.

□ 1530

The folks who shrimp in the Gulf of Mexico are special to me. The folks who live there are special to me. The folks who vote there, and send me to Congress to be their voice, want somebody to say enough is enough, and there is a difference between the waterfowl lands that we know and hunt and the lands in individual residential subdivisions that are already for years before of no more ecological value but are very important, and property rights to the individuals who now own them.

I wish somebody could take that journey. Quite frankly, I agree with the gentleman from Michigan [Mr. BONIOR]. I wish I could go back a decade, because right now I am being instructed by folks who cannot understand how to stop crime in their big city on how to do a crime bill, for folks who where I live have been pretty managing and able to have power and rights in their sheriffs to do that for some time, and who do not want cities to teach them how to fight crime, and who sure do not want Manhattan and New York City to tell them about the environment.

They are especially tired of hearing about people that live in Washington DC, which by the way is a marsh, and which under any definition would be a wetland, but no one here who is a bureaucrat would dare treat the people in Washington like they treat the people in Lafayette, LA, on exactly the same kind of property.

The folks at the EPA who paid for the scientists to do the study talk about how useful it is. Well, if I paid for it, I would expect it to be real nice to me, too. Instead I have people who actually paid for it because they wrote the checks for the tax dollars, and who are explaining to the EPA that they work for them and that they ought to have some of their interest in mind.

I wish we could take that journey. It would be more philosophical than it would be in the 1,200 miles of distance, and it would have more education than the combined degrees of all of the scientists who prepared the report, and it would distinguish for you the clear and simple decision to be made in supporting the Clean Water Act.

Clean water is for people, people who in many cases own property, who care about the quality of life there more than any of these whose greatest desire is to exert bureaucratic control over the future of their lives. They believe more in their hometown than they believe in Washington. They believe more in their State than they believe in Washington, and they are right. That will be the degree to which we measure the independence and individuality of this vote on this floor. I hope Members will join me in voting yes.

Mr. SHUSTER. Mr. Chairman, I yield myself 3 minutes.

Mr. Chairman, I was astonished by some of the comments of my good friend from Michigan, the minority whip, and indeed the gentleman from Missouri, the minority leader. They perhaps were not on the floor when we quoted directly from the National Governors Association and others, to have them say that this bill is written and supported by polluters and by special interests.

Let me share again who some of those so-called polluters and special interests are. I guess the National Governors Association are polluters and special interests, because we have a letter from them saying, "We urge approval of this bill."

I suppose the National Association of Counties, National League of Cities and U.S. Conference of Mayors are polluters and special interests, because we have this letter from them saying that when together we represent all of the Nation's elected officials and charges that H.R. 961 rolls back environmental protection and that it guts the Clean Water Act are totally unfounded.

I suppose, according to their definition, the Association of State and Interstate Water Pollution Control Administrators are polluters and special interests, because we have a letter from them saying with its new comprehensive approaches to nonpoint source watershed and water management, H.R. 961 sets forth a framework that better protects this Nation's waterways.

I support the Water Environment Federation, made up of 42,000 water quality specialists, are polluters and special interests, because we have a letter from them saying, "We, therefore, want to again urge you to support the Clean Water Amendments of 1995 on the House floor."

So by the definition of my liberal friends on the Democratic side, I guess the special interests and the polluters are the Governors and the mayors and the county leaders and the people responsible for seeing to it that clean water is maintained across our States.

However, let us suppose for a moment all the terrible things that we have heard about this legislation are true. Under this legislation, every State has the absolute right to impose whatever stricter standards it chooses to impose in its State.

So assuming the very worst, the States still have the right to impose whatever standards they choose to impose.

Yes, the bottom line here is what our friends on the other side are embracing, is the "Washington knows best" crowd. That is the argument here today. Does Washington know best or do our States and our localities know best?

That is the fundamental issue, and it is for that reason that we should support this legislation, we should reject the Boehlert substitute. We should support this legislation because it indeed goes a long way toward further improving the clean water of America.

Mr. MINETA. Mr. Chairman, I yield 2 minutes, the balance of our time, to the gentleman from Massachusetts [Mr. KENNEDY.]

Mr. KENNEDY of Massachusetts. Mr. Chairman, first I want to thank the gentleman from California [Mr. MINETA], the ranking member, for the tremendous work he has done on trying to protect America's clean water.

This bill that has become known as the Clean Water Act is fast becoming the dirty polluters protection act. The fact is that we have a nation today where 40 percent of our water fails to meet State designated water standards for swimming, fishing, drinking, and other uses. If we are truly interested in protecting this country, not only for our generation but for future generations, the last thing in the world we ought to be doing is allowing this country to create dirtier water that will ultimately affect the basic fundamental health care of this country.

In this bill, we see specific standards being rolled back. The water quality standards will be downgraded. There will be a rollback on the point source pollution issue, which means that big corporations will be able to pollute the drains that go and take water directly into our harbors, and the ratepayers that pay for the sewage treatment will be charged directly for the pollution that the biggest companies in America will go ahead and continue. We see the storm water runoff program again being gutted; the nonpoint source pollution program being gutted.

I heard the chairman of the committee suggest that the mayors and the Governors are all in favor of this bill, but the fact of the matter is he knows right well that they oppose unanimously the provisions in this pertaining to wetlands. The wetlands provisions will absolutely gut the budget of America. If we end up having to pay the billions and billions of dollars which this bill calls for to the owners of wetlands that right now are needed to protect the fundamental environment of this country, it will not only wreck our environment but it will wreck the fundamental economy of this country.

Therefore, let's recognize this bill for what it is. This bill is nothing more than a transfer, again, of power from the ordinary citizens of this country to the biggest corporations in America, saying we will turn a blind eye to what they do, to what the polluters do, in order to look out after the corporations. The Clean Water Act is going to be flushed down the toilet of the Republican agenda.

Mr. SHUSTER. Mr. Chairman, I yield the balance of our time for closing the debate to the gentleman from Tennessee [Mr. WAMP], the distinguished vice chairman of our Subcommittee on Water Resources and Environment.

The CHAIRMAN. The gentleman from Tennessee [Mr. WAMP] is recognized for 3½ minutes.

Mr. WAMP. Mr. Chairman, several months ago dozens of us were sent to Washington, DC, to try to bring back to this institution balance and reason. The American people want the pendulum to come back to the middle. We have gone too far with regulation. We have gone too far with litigation. We have gone too far with taxation. I could go on and on. The pendulum needs to come back to the middle.

We are not, as you hear from the other side, rolling back and gutting and destroying and all of these emotional words. We are bringing the pendulum back to the middle and preserving clean water and doing the right thing, but making it tolerable for our free society.

I am proud to come from Chattanooga, TN, a city that at one time was on the dirty air list in this country. Through a spirit of cooperation from the private sector and some government regulations—yes, some but not too many—we have gone from the dirty air list in this country in Chattanooga, TN to the clean air list. We are now becoming a model with respect to water quality and the improvements there in Chattanooga, but it is done out of a desire to cooperate between the private sector and the public sector, and it is not a result of Federal Government micromanagement in

every single affair of our citizenry in this country.

H.R. 961 maintains our commitment to clean water while honoring our constitutionally protected private property rights. Every mud puddle in America should not be a wetland. We do not live in Eastern Europe or the Soviet Union. We must protect our constitutional rights. Sometimes in order to understand where we need to go, we need to look back.

Today I reference Thomas Jefferson's quote. He said, "A wise and frugal government shall restrain men from injuring one another but shall leave them otherwise free to regulate their own pursuit of industry and improvement."

The Clean Water Amendments of 1995 meet Thomas Jefferson's charge of the balance of regulation.

Back home, since I came here, the folks say to me, "Isn't there anything that Democrats and Republicans can agree on? Do they always have to go to the House floor and say they're the worst and we're the best and engage in all this partisan division?"

Folks, this is it. This is a historic piece of legislation, and dozens of reasonable Democrats are going to join us. I worked on the subcommittee and the committee level with these reasonable Democrats and they led the charge: good men and women from all across the country saying this is a case where the government has become too big and intrusive, and we cannot continue to thrive as a free society with these onerous regulations.

Bring the pendulum back to middle. All of my reasonable colleagues on both sides of the aisle join us in support of H.R. 961. We will do the right thing together.

Mr. REED. Mr. Chairman, I rise in strong opposition to the bill before us today. Most of us agree that the Clean Water Act has been instrumental in cleaning up our Nation's waters, yet we are debating a bill that, if enacted, would move us backward and undercut the progress that we have made to ensure that our Nation's waters are drinkable, swimmable, and fishable.

If enacted, H.R. 961 would devastate Rhode Island. Rhode Island's 420 miles of coastline, beaches, and water have long been a destination for tourists. Indeed, Narragansett Bay has played an integral role in my State's historical, social, and financial development. In 1989 alone, commercial fishing revenues generated over $42 million, marine recreation generated $146 million, the marine industry generated $637 million, and in 1992, the shellfishing industry yielded a harvest worth $11 million. Total revenues associated with Narragansett Bay exceeded $1 billion for the State of Rhode Island in 1989.

This sort of economic stability is predicated on clean water. However, there is still more work to be done. Beaches are monitored but periodically exceed safe water quality tests. And bans against shellfishing in Rhode Island still occur all too frequently. In December 1992, 2,800 acres of prime winter shellfish harvesting areas were closed, causing a loss of $1 million in revenues. The State was able to begin to address this environmental and economic disaster because of the support provided under the Clean Water Act's coastal nonpoint source management program, the National Estuary Program, and the National Pollutant Discharge Elimination System (NPDES).

In 1994, the State was able to reopen part of the shellfish harvesting area. However, 40 percent of the shellfish beds are still periodically closed due to coastal nonpoint source pollution, stormwater runoff, and combined sewer overflows. Rhode Island's share of our Nation's total quahog landings was nearly 50 percent in 1986. In 1993, it had dropped to 13 percent. Seventy percent of this drop was due to a decrease in water quality. What this means is that every time it rains, shellfishermen in Rhode Island are reminded that the problem has not been fixed yet.

Rhode Islanders also recognize the importance of a clean bay. A 1992 poll by the State Department of Environmental Management and the Narragansett Bay project found that 98 percent of those surveyed believed that Narragansett Bay is important to Rhode Island, and 93 percent said that it is important to take steps to reduce pollution in Narragansett Bay.

And today we are debating a bill, which, if enacted, would repeal the Clean Water Act's coastal nonpoint source management program. It does not contain any of the language of the DeLauro-Lowey Water Pollution Control and Estuary Restoration Act. And, it eliminates the storm water permit program.

Our water resources are already being pushed to their limits. Population in coastal areas continues to increase. In fact, by the year 2010, Rhode Island's population is expected to grow by 10 percent, with 47 percent of this growth occurring in coastal areas. This increase in population, along with development and pollution, puts more strain on our natural resources, particularly estuaries. And 75 percent of the fish caught by sportsmen and fishermen are estuarine-dependent.

The Clean Water Act has meant jobs, increased revenues for my State, and an increased quality of life for the residents of Rhode Island, as well as many other coastal states. The Clean Water Act provides States with the tools they need to combat the problems that still pollute our waterways. We should increase funding for the State Revolving Funds, but we need to do it in a meaningful way.

Now is not the time to roll back regulations that have improved our Nation's economy, environmental resources, and health. I urge my colleagues to oppose this bill.

Mr. MANTON. Mr. Chairman, I rise today to express my deep concern about the Clean Water Act amendments we are considering this week. Twenty years ago, Congress passed the landmark Clean Water Act that is responsible for remarkable improvement in the quality of our Nation's streams, rivers, and oceans. The Clean Water Act is a success story. It demonstrates the ability of Government to positively address a serious national problem. Today, economic development and revitalization, as well as tourism, are thriving along once threatened waterways. And while I encourage careful scrutiny of Federal agency actions, a balance must be struck between economic interests and Federal regulations affecting our water resources. Unfortunately, H.R. 961 does not strike this balance and simply goes too far.

As the former chairman of the Subcommittee on Fisheries Management and a member of the Merchant Marine and Fisheries Committee, I have serious problems with the provisions of H.R. 961 that would eliminate protection for a large percentage of American wetlands and significantly relax our national water quality standards.

Wetland protection is not just a local issue. It affects all parts of our country and provides billions of dollars in economic benefits. Wetlands are vital for both flood control and water quality as well as providing the spawning grounds for fish that are important to the commercial and recreational fishing industries. Our Nation's coastal communities, that support a multimillion-dollar fishing and tourism industry, are dependent on the continued safety and protection of our water resources.

As a Member representing this Nation's largest port city, I am fearful that H.R. 961 will halt the progress the Clean Water Act has achieved in cleaning up the Hudson River, New York Harbor, and Long Island Sound. Over the past 20 years, the Clean Water Act has been successful in both improving the quality of our Nation's ocean and coastal waters and in renewing the public's faith in Government's ability to protect our environment.

Mr. Chairman, clean water is crucial to ensuring public health, welfare, and quality of life. I urge my colleagues to oppose this ill-conceived measure.

Mr. JOHNSON of South Dakota. Mr. Chairman, I rise in support of H.R. 961, the Clean Water Act amendments, even knowing that it is a flawed bill. While this legislation accomplishes a number of positive things, it also unnecessarily retreats on some important clean water initiatives. Nonetheless, no other clean water legislation can secure sufficient votes to pass this House and failure to address the inadequacies of the current Clean Water Act is not an alternative which I can support.

It is important to continue to move the clean water debate forward, and it is my hope that the Senate and conference committee will improve this legislation so that the final version of this bill will be a more carefully deliberated and moderate legislative effort.

Mr. KIM. Mr. Chairman, I rise in support of H.R. 961 and commend Chairman SHUSTER and the other members of our committee who have put this comprehensive reform package together.

Our committee spent months working with Governors, State legislatures, local governments, and the regulated community to learn what the problems are with the current law and how to solve them. We kept what is best in the Clean Water Act and provided the necessary funding to tackle the really difficult problems like nonpoint source pollution.

Our bill is a bipartisan bill with strong committee support, introduced by 8 Republicans and 8 Democrats, and passed the subcommittee 19 to 5 and full committee 42 to 16.

Don't be fooled, this bill has strong support at home and in Congress.

As you listen to the debate over the next 3 days, remember what this past election taught us. The American people want a Government that achieves results. They want a Government that respects their rights, their property, and returns authority to the States.

This bill does all of this: reforms the disastrous wetlands program; sets strong water quality criteria that are also cost effective; provides States the flexibility to meet these standards; respects private property rights; and most importantly, it has the money to achieve its goals.

WETLANDS EXAMPLE—1992 VENTURA FLOOD

Let me give you one example of why we need to pass H.R. 961:

In 1992, Ventura County tried for months—unsuccessfully—to get a 404 wetlands permit to clear vegetation out of a flood control channel. The county knew that a severe rainstorm would cause terrible flooding if the channel was clogged with plants. The EPA called the area a wetland and spent months processing the permit. When torrential rains finally came, Ventura was forced to have Governor Wilson and two Congressmen secure an emergency wetlands permit. The county set bulldozers into the channel during the storm and a few hours before the flood hit.

The flooding devastated communities and took several lives.

It is clear that any program that results in these problems must be reformed.

COST EFFECTIVE GOALS AND STANDARDS

Our bill sets tough water quality goals for the States to achieve; allows the Federal Government to enforce water quality criteria; requires EPA to consider costs and benefits; and makes risk assessment a prominent element of water quality decisionmaking.

STATE FLEXIBILITY

As a former city engineer, I know that the solutions to water quality problems in my district are different than New York's solutions. The goal is the same, but the ways to get there are as diverse as the communities in our country. That's why we need flexibility in the law.

Our bill recognizes this diversity and gives States the tools to achieve Federal goals:

Authorizes pollutant trading within watersheds.

Allows States to develop watershed protection programs that integrate nonpoint source and point source solutions to reach Federal water quality goals.

Again, if the States fail to improve water quality, then the Federal Government can enforce the Federal criteria.

PRIVATE PROPERTY RIGHTS

The American people are tired of a Federal Government that fails to recognize the economic repercussions of its actions.

Our bill is consistent with H.R. 965 which already passed the House.

Requires the Federal Government to compensate landowners whose property value has been diminished 20 percent or more by a Federal wetland restriction.

This does not prevent important health or safety regulations, but recognizes the constitutional requirement of private property compensation.

FUNDING—ENDS UNFUNDED MANDATES

Perhaps the strongest argument that our bill improves water quality is that it gives States the money to achieve Federal water quality goals: It authorizes $15 billion over 5 years for the State revolving loan fund; authorizes $1 billion over 5 years for nonpoint source funding; and $750 million over 5 years for State administration block grants.

Many Members would have you believe that you can't have clean water without bureaucratic nightmares, burdensome regulations, or unfunded mandates. But you can. The American people demand it. And this bill will give it to you.

I strongly urge my colleagues to support the chairman's bill and oppose weakening amendments.

Mr. BROWN of California. Mr. Chairman, for many years now I have been advocating that we make use of scientific and technological information in the formulation and implementation of public policy. Listening to the many calls for, and endorsements of, the use of sound science that have been made in the 104th Congress you would think that I would feel some sense of accomplishment. Instead, I am shocked and appalled at how far the rhetoric has diverged from reality. The gap has never been wider. Although many supporters of this legislation have emphasized to me their wish to have public policy based upon sound science I cannot reconcile the concept of sound science with the legislation before us. H.R. 961 contains provisions that demonstrate a flagrant disregard for that state of scientific and technological knowledge in the area of water quality. In many cases, it seems the committee went out of its way to ignore scientific information. The wetlands classification provisions of this bill are but one illustration of this.

Yesterday, the National Academy of Sciences released their study, "Wetlands: Characteristics and Boundaries." This review of wetland delineation was undertaken at the request of Congress. Anyone who takes the time to read through this report or its Executive Summary cannot possibly claim that the wetland classification and delineation scheme contained in this bill has a basis in science. It does not. H.R. 961 contains a political wetland classification scheme that is designed to undermine both Federal and State protection of these valuable ecosystems. Defend this scheme, if you wish, on its political merits, but since science was left out of the process of drafting it, be consistent and leave science out of the defense of it.

In looking at this bill, there are many provisions that have been driven by a number of factors: Politics, special interests, short-term concerns about the costs and benefits as they affect water pollution-prone industries, and a blind faith that good intentions will maintain water quality. However, I find little evidence that science or common sense were included and this bill shows a staggering lack of consideration of the many factors embodied by the term "social justice." Every human being, every household on this planet requires water. Every one.

There are many competing uses for our water resources, and they should all be carefully considered and weighed against one another. The discharge of wastewater into water bodies is one of these uses, and it is one that has the potential to preclude other critical uses if not carefully monitored and managed. Numerous provisions in this bill give more consideration to minimizing the cost to polluters of controlling pollution discharges than they do to minimizing the social and economic costs of degrading our water supplies, thus elevating the disposal use above all others. To make cheap pollution disposal the primary focus of this country's water quality policy is totally irresponsible and scientifically, economically, and socially indefensible.

The Clean Water Act is one of our greatest public health and environmental success stories. There are some challenges that remain, and there are sections of the law that should be altered to address the achievement of water quality in a more cost-effective manner. H.R. 961 does not do this. I cannot believe that after all the public money that has been spent to clean up air, water, and land when we have failed to adequately control disposal of pollutants that we will now proceed to return to failed policies that promoted pollution rather than prevention.

Our constituents do not want to return to the days before the Clean Water Act was implemented in this country. Clean water is essential for public health and economic health. Enactment of this bill will be devastating to both. I strongly urge my colleagues to reject this bill, and to insist that the Members of the Transportation Committee draft a responsible piece of legislation that balances all competing uses and all human needs for water in an equitable and truly cost-effective manner.

Mr. STOKES. Mr. Chairman, I rise to oppose H.R. 961, the Clean Water Amendments of 1995, a bill that would turn back progress of the Clean Water Act and undermine two decades of progress in improving the Great Lakes—an important recreational and economic resource to the people of my State. Millions of jobs are directly or indirectly dependent upon water from that body of surface water. H.R. 961 would threaten the economic and environmental resources that the lakes provide.

I am concerned that H.R. 961 eliminates the concept of a level playing field for businesses in the Great Lakes basin, the basis of the Great Lakes Governors' Agreement of 1986, and the Great Lakes initiative. H.R. 961 allows a State to adopt some provisions of the recent Great Lakes initiative, and not others. Clearly, this creates interstate competition based on willingness to degrade the environment.

H.R. 961 also allows companies and municipalities to avoid compliance with proven and accepted environmental standards and in effect rewards those who have done the least to prevent pollution with the greatest opportunity to reduce the cost of wastewater treatment. Indeed, time and time again, this bill guts the Clean Water Act and seriously weakens the Great Lakes water quality initiative—a landmark program designed to ensure that all States within the Great Lakes basin have uniform water quality standards to protect these national treasures—the Great Lakes.

Mr. Speaker, many of the problems facing the Great Lakes are interstate in character and cannot be addressed by any State acting alone. Over the past two decades my State and others have come to rely upon the State-Federal partnership that is the cornerstone of

our system of public health protection. This concept of partnership was the basis for the cooperative effort of eight States to develop a water quality guidance program to protect the Great Lakes ecosystem. The overall objective is a consistent, basinwide water quality standard for the protection of human health, aquatic life, and for the first time, wildlife. This bill would significantly erode that partnership.

H.R. 961 steps backward, away from the call for cost-effective best management practices at the earliest possible date. The new deadline for action would be 20 years from now—a generation away. At the same time some industries would continue to release significant amounts of hazardous substances into the lakes.

Mr. Speaker, I submit that now is not the time to weaken the current clean water law which has been highly effective in improving the Nation's water resources. The argument that the Clean Water Act has become more burdensome than pollution itself is without foundation. What is clear, and rests on a secure factual foundation, is that the Clean Water Act has done much to protect the public's health and increase social and economic opportunities. And even more must be done. Unfortunately, H.R. 961 will ensure that we do less, not more. For these reasons I urge my colleagues to oppose H.R. 961.

Mr. SHUSTER. Mr. Chairman, the committee report accompanying H.R. 961, the Clean Water Amendments of 1995 (H Rept. 104–112), inaccurately reports one of the rollcall votes that was taken in the full Committee on Transportation and Infrastructure. On the Mineta motion relating to unfunded mandates, listed on pages 199–200 of the committee report, the committee report indicates a yes vote by Mr. ZELIFF.

The committee records (included in the report filed with the Clerk) indicate that Mr. ZELIFF's vote was no on that rollcall. Apparently, a printing mistake was made in the printing of the report. An errata sheet to the committee report will be printed correcting this mistake. The final record will indicate that Mr. ZELIFF's vote was no on the Mineta motion relating to unfunded mandates.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the Committee amendment in the nature of a substitute printed in the bill shall be considered by titles as an original bill for the purpose of amendment. The first three sections and each title are considered as read.

During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition to a Member who has caused an amendment to be printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as read.

Before consideration of any other amendment, it shall be in order to consider the amendment printed in House Report 104–114. The amendment may be offered only by a Member designated in the report, may amend portions of the bill not yet read for amendment, shall be considered as read, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The amendment shall be debatable for 10 minutes, equally divided and controlled by the Chairman and ranking minority member of the Committee on Transportation and Infrastructure.

If the amendment is adopted, the Committee amendment in the nature of a substitute as so amended shall be considered as original text for the purpose of further amendment.

The Clerk will designate section 1.

The text of section 1 is as follows:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Clean Water Amendments of 1995".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definition.
Sec. 3. Amendment of Federal Water Pollution Control Act.

TITLE I—RESEARCH AND RELATED PROGRAMS

Sec. 101. National goals and policies.
Sec. 102. Research, investigations, training, and information.
Sec. 103. State management assistance.
Sec. 104. Mine water pollution control.
Sec. 105. Water sanitation in rural and Native Alaska villages.
Sec. 106. Authorization of appropriations for Chesapeake program.
Sec. 107. Great Lakes management.

TITLE II—CONSTRUCTION GRANTS

Sec. 201. Uses of funds.
Sec. 202. Administration of closeout of construction grant program.
Sec. 203. Sewage collection systems.
Sec. 204. Treatment works defined.
Sec. 205. Value engineering review.
Sec. 206. Grants for wastewater treatment.

TITLE III—STANDARDS AND ENFORCEMENT

Sec. 301. Effluent limitations.
Sec. 302. Pollution prevention opportunities.
Sec. 303. Water quality standards and implementation plans.
Sec. 304. Use of biological monitoring.
Sec. 305. Arid areas.
Sec. 306. Total maximum daily loads.
Sec. 307. Revision of criteria, standards, and limitations.
Sec. 308. Information and guidelines.
Sec. 309. Secondary treatment.
Sec. 310. Toxic pollutants.
Sec. 311. Local pretreatment authority.
Sec. 312. Compliance with management practices.
Sec. 313. Federal enforcement.
Sec. 314. Response plans for discharge of oil or hazardous substances.
Sec. 315. Marine sanitation devices.
Sec. 316. Federal facilities.
Sec. 317. Clean lakes.
Sec. 318. Cooling water intake structures.
Sec. 319. Nonpoint source management programs.
Sec. 320. National estuary program.
Sec. 321. State watershed management programs.
Sec. 322. Stormwater management programs.
Sec. 323. Risk assessment and disclosure requirements.
Sec. 324. Benefit and cost criterion.

TITLE IV—PERMITS AND LICENSES

Sec. 401. Waste treatment systems for concentrated animal feeding operations.
Sec. 402. Permit reform.
Sec. 403. Review of State programs and permits.
Sec. 404. Statistical noncompliance.
Sec. 405. Anti-backsliding requirements.
Sec. 406. Intake credits.
Sec. 407. Combined sewer overflows.
Sec. 408. Sanitary sewer overflows.
Sec. 409. Abandoned mines.
Sec. 410. Beneficial use of biosolids.
Sec. 411. Waste treatment systems defined.
Sec. 412. Thermal discharges.

TITLE V—GENERAL PROVISIONS

Sec. 501. Consultation with States.
Sec. 502. Navigable waters defined.
Sec. 503. CAFO definition clarification.
Sec. 504. Publicly owned treatment works defined.
Sec. 505. State water quantity rights.
Sec. 506. Implementation of water pollution laws with respect to vegetable oil.
Sec. 507. Needs estimate.
Sec. 508. General program authorizations.
Sec. 509. Indian tribes.
Sec. 510. Food processing and food safety.
Sec. 511. Audit dispute resolution.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Sec. 601. General authority for capitalization grants.
Sec. 602. Capitalization grant agreements.
Sec. 603. Water pollution control revolving loan funds.
Sec. 604. Allotment of funds.
Sec. 605. Authorization of appropriations.
Sec. 606. State nonpoint source water pollution control revolving funds.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Technical amendments.
Sec. 702. John A. Blatnik National Fresh Water Quality Research Laboratory.
Sec. 703. Wastewater service for colonias.
Sec. 704. Savings in municipal drinking water costs.

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

Sec. 801. Short title.
Sec. 802. Findings and statement of purpose.
Sec. 803. Wetlands conservation and management.
Sec. 804. Definitions.
Sec. 805. Technical and conforming amendments.
Sec. 806. Effective date.

TITLE IX—NAVIGATIONAL DREDGING

Sec. 901. References to act.
Sec. 902. Ocean dumping permits.
Sec. 903. Dredged material permits.
Sec. 904. Permit conditions.
Sec. 905. Special provisions regarding certain dumping sites.
Sec. 906. References to Administrator.

□ 1545

AMENDMENTS OFFERED BY MR. SHUSTER

Mr. SHUSTER. Mr. Chairman, I offer en bloc amendments.

The CHAIRMAN. The Clerk will designate the amendments.

The text of the amendments is as follows:

Amendments offered by Mr. SHUSTER:

Page 6, line 21, before the first period insert the following:

and not unreasonably restrict outdoor recreation and other socially beneficial activities

Page 7, strike lines 14 through 16 and insert the following:

(b) BASIC RESEARCH AND GRANTS TO LOCAL GOVERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(B)(3)) is amended to read as follows:

"(3) in cooperation with Federal, State and local agencies and public or private institutions, organizations, or individuals, conduct and promote a comprehensive program of basic research, experiments, and studies relating to causes, sources, effects, extent, prevention, and detection of water pollution and make grants to State water pollution control agencies, interstate agencies, local governments, other public or nonprofit private agencies, institutions, organizations, and individuals for such purposes;".

Page 8, line 1, after "grants to" insert "States, local governments, and".

Page 8, line 3, after "works" insert "(including treatment works that utilize an alternative wastewater treatment system)".

Page 8, line 17, after "works" insert "and alternative wastewater treatment systems".

Page 8, line 20, strike "water" and insert "wastewater".

Page 9, strike lines 6 through 13 and insert the following:

(2) by inserting before the period at the end the following: "; (7) not to exceed $21,243,100 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsection (b)(3); and (8) not to exceed $10,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(8) and (b)(9)".

Page 31, line 15, after "works" insert "and alternative wastewater treatment systems".

Page 32, line 15, strike "not later than" and all that follows through "established" on line 16 and insert the following:

within a reasonable period of time as determined by the Administrator or the State, as appropriate, considering facility planning, design, construction, and other implementation factors

Page 34, line 5, strike "such Act" and insert "the Surface Mining Control and Reclamation Act of 1977".

Page 34, strike lines 6 through 10 and insert the following:

"(B) the post-mining levels of pollutants (other than pH) discharged from such operation do not exceed the levels of pollutants discharged from the remined area before the coal remining operation began and the post-mining pH levels of the discharges from the remined area are not reduced below the pH levels of the discharges from the remined area before the coal remining operation began.".

Page 36, line 14, strike "shall reduce" and all that follows through the period on line 17 and insert the following:

shall take into account the permittee's good-faith efforts to implement the innovation and to comply with any interim limitations and may reduce or eliminate the penalty for such violation.

Page 37, line 5, strike the closing quotation marks and the final period.

Page 37, after line 5, insert the following:

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.".

Page 37, lines 12 and 13, strike "Notwithstanding any other provision of this Act, the Administrator" and insert "The Administrator".

Page 37, line 15, insert "at the request of the permittee and" before "after public notice".

Page 37, lines 17 and 18, strike "subsection (b)" and insert "subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E)".

Page 37, line 24, insert "from the facility" after "pollutants".

Page 38, line 7, strike "subsection (b)" and insert "subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E)".

Page 38, after line 23, insert the following:

"(4) LIMITATIONS ON MODIFICATIONS.—A modification of an otherwise applicable limitation or standard may not be made under this subsection if such modification—

"(A) will cause a receiving body of water that is meeting its designated use for all pollutants to no longer meet such use;

"(B) will prevent a receiving body of water that is not meeting its designated use for all pollutants from meeting such use; or

"(C) will cause the introduction of pollutants into a publicly owned treatment works that interferes with, passes through, or is otherwise incompatible with such works or will cause such works to violate its permit under section 402 of this Act.

"(5) GUIDANCE.—Not later than 270 days after the date of the enactment of this subsection, the Administrator shall publish guidance for determining whether a modification of an otherwise applicable limitation or standard under this subsection will achieve an overall reduction in emissions to the environment and result in an overall net benefit to the environment. In developing such guidance, the Administrator shall consult with the States and other interested parties.

"(6) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.

Page 38, line 24, strike "(4)" and insert "(7)".

Page 39, lines 8 and 9, strike "Notwithstanding any other provision of this Act, the Administrator" and insert "The Administrator".

Page 41, line 22, after the period insert the following:

Nothing in this subsection shall be construed to authorize the Administrator or a State to enforce, place conditions on, or otherwise regulate emissions into the air or the treatment, storage, or disposal of solid waste or require or enforce conditions on the manufacturing or processing of a chemical substance or mixture in any permit issued under this Act.

Page 41, after line 22, insert the following:

"(6) LIMITATIONS ON MODIFICATIONS.—A modification of an otherwise applicable limitation or standard may not be made under this subsection if such modification—

"(A) will cause a receiving body of water that is meeting its designated use for all pollutants to no longer meet such use;

"(B) will prevent a receiving body of water that is not meeting its designated use for all pollutants from meeting such use; or

"(C) will cause the introduction of pollutants into a publicly owned treatment works that interferes with, passes through, or is otherwise incompatible with such works or will cause such works to violate its permit under section 402 of this Act.

"(7) GUIDANCE.—Not later than 270 days after the date of the enactment of this subsection, the Administrator shall publish guidance for determining whether a modification of an otherwise applicable limitation or standard under this subsection will achieve an overall reduction in discharges to the watershed and result in an overall net benefit to the environment. In developing such guidance, the Administrator shall consult with the States and other interested parties.

Page 41, line 23, strike "(6)" and insert "(8)".

Page 51, line 8, insert "applicable to such waters for all pollutants" after "uses".

Page 51, strike line 18 and all that follows through line 4 on page 52.

Page 52, line 5, strike "(iv)" and insert "(iii)".

Page 52, after line 10, insert the following:

(d) CONSIDERATION OF INFLUENCE OF EXOTIC SPECIES.—Section 303(c)(2) is further amended by adding at the end the following:

"(D) CONSIDERATION OF INFLUENCE OF EXOTIC SPECIES.—In establishing, adopting, or reviewing standards or goals based upon fishable or swimmable uses or uses to assure protection or propagation of a balanced population of fish, shellfish, and wildlife, the State or the Administrator shall consider the influence of exotic or introduced species upon such standards, goals, or uses.

"(E) RECLAIMED WASTEWATER.—If a State adopts or reviews water quality standards and policies pursuant to this section, the State may consider and balance, in addition to other factors referred to in this section, the need for allowing the discharge of reclaimed wastewater to navigable waters to promote the beneficial use of reclaimed wastewater. In addition, the State may take into consideration and reflect in the standards—

"(i) the use and value of reclaimed wastewater for public water supplies;

"(ii) the physical, chemical, and biological conditions that influence water quality in the area subject to the standards, including extremes of temperature, water flow, turbidity, mineralization, salinity, and flooding; and

"(iii) whether the discharge of reclaimed wastewater will result in a net environmental benefit to the watershed subject to the standards.".

(e) CLARIFICATION OF MIXING ZONE AUTHORITY.—Section 303 (33 U.S.C. 1313) is amended by adding at the end the following:

"(i) CONTINUATION OF MIXING ZONES.—Nothing in this Act shall be construed to authorize the Administrator to prohibit or discontinue mixing zones established by any State for any pollutant or class of pollutants.".

Page 52, line 22, strike "an aquatic species" and all that follows through "criteria" on line 24 and insert the following:

an aquatic species that is indigenous to the type of waters, a species that is representative of such a species, or an appropriate species that indicates the toxicity of the effluent in the receiving waters

Page 54, line 1, after "demonstrates" insert "to the permitting authority".

Page 54, lines 3 and 4, strike "indigenous, or representative of indigenous, and relevant" and insert "indigenous".

Page 54, line 6, after "applicable" insert "numerical".

Page 54, line 7, after "standards" insert "for specific pollutants".

Page 54, line 10, strike "works" and all that follows through the final period on line 12 and insert the following:

works—

"(i) if the source or cause of such toxicity cannot, after thorough investigation, be identified; or

"(ii) if the permittee makes to the permitting authority a demonstration described in subparagraph (A).".

Page 54, line 23, strike "(D)" and insert "(F)".

Page 61, line 16, after the first period insert the following:

In the case of ammonia, the Administrator shall revise the criteria only to the extent that the current criteria are more stringent than necessary to achieve the objectives of this Act.

Page 63, after line 3, insert the following:

(e) INDUSTRIAL PUBLICLY OWNED TREATMENT WORKS.—Section 304(d) (33 U.S.C. 1314(d)) is amended by adding at the end the following:

"(5) INDUSTRIAL PUBLICLY OWNED TREATMENT WORKS.—

"(A) GUIDELINES.—Not later than 18 months after the date of the enactment of this paragraph, the Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish guidelines for effluent limitations under section 301 and sludge use and disposal requirements under section 405 applicable to publicly owned treatment works designed to treat a predominance of industrial wastewater. Such guidelines shall take into account differences in constituents, treatability, available technology procedures, and costs resulting from the fact that the publicly owned treatment works treat wastewater and manage sludge derived predominantly from industrial sources.

"(B) PERMITS.—Following the issuance of guidelines under this paragraph, permits under section 402 for such publicly owned treatment works shall be derived using the guidelines issued under this paragraph in lieu of applying the regulations otherwise applicable to publicly owned treatment works promulgated under paragraph (1) of this subsection and section 405(d).".

Page 63, line 4, strike "(e)" and insert "(f)".

Page 63, line 7, strike "3 years" and insert "1 year".

Page 63, line 24, strike "(f)" and insert "(g)".

Page 63, line 4, strike "(g)" and insert "(h)".

Page 64, strike line 15 and insert the following:

SEC. 308. PERSONNEL AND REPORTING.

Conform the table of contents of the bill accordingly.

Page 64, line 16, before "Section" insert "(a) PERMITTING BOARDS.—".

Page 64, after line 23, insert the following:

(b) REPORTING.—Section 305(b) (33 U.S.C. 1315(b)) is amended—

(1) in paragraph (1) by striking the matter preceding subparagraph (A) and inserting "Not later than 3 years after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, each State shall prepare and submit to the Administrator a report which shall include—"; and

(2) by adding at the end the following:

"(c) CONSOLIDATION OF REPORTING REQUIREMENTS.—A State may consolidate any of the reporting requirements of this Act that relate to ambient water quality into the report required under this section.".

Page 65, line 5, strike "(5)" and insert "(6)".

Page 68, line 20, strike "20,000" and insert "10,000".

Page 68, line 25, after "alternative" insert "wastewater".

Page 74, line 19, strike "and".

Page 74, line 22, after the semicolon insert "and".

Page 74, after line 22, insert the following:

"(E) local limits established by such treatment works in its approved pretreatment program are preventing and will continue to prevent the introduction of pollutants into such treatment works that interfere with, pass through, or are otherwise incompatible with such treatment works;

Page 75, lines 1 and 5, before "local" insert "approved".

Page 84, line 14, strike "or runoff".

Page 92, line 2, after "vessel" insert "or other facility".

Page 93, strike line 7 and all that follows through line 2 on page 95 and insert the following:

SEC. 318. COOLING WATER INTAKE STRUCTURES.

Section 316(b) (33 U.S.C. 1326(b)) is amended—

(1) by inserting after "(b)" the following: "REGULATION OF COOLING WATER INTAKE STRUCTURES.—";

(2) by inserting before "Any" the following: "(1) IN GENERAL.—";

(3) by indenting paragraph (1), as designated by paragraph (2) of this section, and moving such paragraph 2 ems to the right; and

(4) by adding at the end the following:

"(2) INTAKE STRUCTURE CONSIDERATIONS.—

"(A) IN GENERAL.—The Administrator shall require the application of the best technology available to new and existing cooling water intake structures in instances where the Administrator has determined that such a structure is having or could have a significant adverse impact on the aquatic environment.

"(B) NEW INTAKE STRUCTURE.—In identifying the best technology available for any new cooling water intake structure pursuant to subparagraph (A), the Administrator shall consider, at a minimum, the following:

"(i) The relative technological, engineering, and economic feasibility of available intake structure technologies for minimizing adverse impacts to the aquatic environment.

"(ii) The relative technological, engineering, and economic feasibility of available alternatives as to the location, design, construction, and capacity of the intake structure.

"(iii) The relative environmental, social, and economic costs and benefits of available technologies and alternatives identified pursuant to this subparagraph or subparagraph (D).

"(iv) The projected useful life of the point source at which the new cooling water intake structure is located.

"(C) EXISTING INTAKE STRUCTURES.—In identifying the best technology available for an existing cooling water intake structure pursuant to subparagraph (A), the Administrator shall consider, at a minimum, the following:

"(i) The relative technological, engineering, and economic feasibility of reasonably available intake structure retrofit technologies for minimizing adverse impacts to the aquatic environment.

"(ii) The relative environmental, social, and economic costs and benefits of available technologies and alternatives identified pursuant to this subparagraph or subparagraph (D).

"(iii) The projected remaining useful life of the point source at which the existing cooling water intake structure is located.

"(D) CONSIDERATION OF ALTERNATIVES.—In identifying the best technology available for any new or existing cooling water intake structure, the Administrator shall consider environmental enhancements or any other technique that the owner or operator has identified as appropriate alternatives for minimizing adverse impacts to the aquatic environment.

"(3) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) NEW COOLING WATER INTAKE STRUCTURE.—The term 'new cooling water intake structure' means any intake structure the construction of which commences after the publication of final regulations implementing this subsection.

"(B) EXISTING COOLING WATER INTAKE STRUCTURE.—The term 'existing cooling water intake structure' means any intake structure that is not a new cooling water intake structure.".

Page 109, line 3, strike "and".

Page 109, after line 3, insert the following:

"(E) providing financial assistance with respect to those water pollution control activities which have as their principal purpose the protection of public water supplies; and

Page 109, line 4, strike "(E)" and insert "(F)".

Page 114, line 23, strike "(j)" and insert "(h)".

Page 117, line 7, before "livestock" insert "agricultural inputs, including".

Page 117, line 7, after "manure" insert a comma.

Page 117, after line 18, insert the following:

(q) CONTROL OF SALT WATER INTRUSION.—Section 319 is further amended by adding at the end the following:

"(s) CONTROL OF SALT WATER INTRUSION.—Nothing in this section authorizes the Administrator to require a State to identify or establish procedures and methods to control salt water intrusion beyond what is provided for in section 208(b)(2)(I).".

Page 136, line 16, strike "and" and all that follows through the period on line 24 and insert the following:

, based on available information, and submit to the Administrator for approval a stormwater management program—

"(A) that controls pollution added from stormwater discharges to the navigable waters within the boundaries of the State and improves the quality of such waters; and

"(B) that the State proposes to establish and administer under State law or interstate compact to apply and assure compliance with this section.

The initial program submission must meet the requirements of this subsection and specifically address the first 5 fiscal years beginning after the date of submission of such management program.".

Page 137, lines 24 and 25, strike "established under subsection (i)".

Page 148, line 24, after the period insert the following:

If, upon review of a stormwater pollution prevention plan, the State determines that the plan is inadequate, the State may require the facility to modify the plan.

Page 150, line 24, after the first comma insert "or".

Page 150, line 24, strike "or (c)(2)(F),".

Page 152, line 8, after "PERMITS" insert "AND EFFLUENT GUIDELINES".

Page 152, line 12, after "a" insert "stormwater".

Page 152, line 14, after "1987," insert "or with respect to which an effluent guideline has been issued before February 4, 1987".

Page 153, line 15, strike "(b)" and insert "(c)".

Page 159, lines 17 and 18, strike "of this Act".

Page 161, strike line 4 and all that follows through line 24 on page 162.

Page 163, line 1, strike "(j)" and insert "(i)".

Page 163, line 14, strike "(k)" and insert "(j)".

Page 163, line 16 strike "1996" and insert "1998".

Page 165, line 10, strike "(l)" and insert "(k)".

Page 165, line 10, strike "STORMWATER".

Page 166, line 12, before the comma insert "and section 304(a)(13)".

Page 166, line 20, strike "(m)" and insert "(l)".

Page 167, line 1, strike "(n)" and insert "(m)".

Page 167, line 8, strike "(o)" and insert "(n)".

Page 167, line 12, strike "(p)" and insert "(o)".

Page 168, line 2, after the period insert the following:

Land that was previously used for mining activities for which reclamation requirements of the Surface Mining Control and Reclamation Act of 1977 have been met and a performance bond or deposit required under section 509 of such Act has been released under section 519 of such Act shall no longer be considered an ore mining and dressing site.

Page 168, after line 17, insert the following:

"(5) ACTIVE COAL MINING SITES.—Discharges comprised entirely of stormwater from an active coal mining site operating under a permit issued under the Surface Mining Control and Reclamation Act of 1977 shall be subject to section 319.

Page 168, line 18, strike "(5)" and insert "(6)".

Page 169, after line 19, insert the following:

(d) DEVELOPMENT OF STORMWATER CRITERIA.—Section 304(a) is further amended by adding at the end the following:

"(13) DEVELOPMENT OF STORMWATER CRITERIA.—

"(A) IN GENERAL.—To reflect the episodic character of stormwater which results in significant variances in the volume, hydraulics, hydrology, and pollutant load associated with stormwater discharges, the Administrator shall establish, as an element of the water quality standards established for the designated uses of the navigable waters, stormwater criteria which protect the navigable waters from impairment of the designated beneficial uses caused by stormwater discharges. The criteria shall be technologically and financially feasible and may include performance standards, guidelines, guidance, and model management practices and measures and treatment requirements, as appropriate, and as identified in section 322.

"(B) INFORMATION TO BE USED IN DEVELOPMENT.—The stormwater discharge criteria to be established under this paragraph—

"(i) shall be developed from—

"(I) the findings and conclusions of the demonstration programs and research conducted under section 322(h);

"(II) the findings and conclusions of the research and monitoring activities of stormwater dischargers performed in compliance with permit requirements of this Act; and

"(III) other relevant information, including information submitted to the Administrator under the industrial group permit application process in effect under section 402 of this Act on the day before the date of the enactment of this paragraph;

"(ii) shall be developed in consultation with persons with expertise in the management of stormwater (including officials of State and local government, industrial and commercial stormwater dischargers, and public interest groups); and

"(iii) shall be established as an element of the water quality standards that are developed and implemented under this Act by not later than December 31, 2008.".

Page 169, line 20, strike "(d)" and insert "(e)".

Page 169, line 24, before the period insert "that is subject to section 322".

Page 182, line 1, strike "An" and insert "If an".

Page 182, line 2, strike "that".

Page 182, line 6, strike "may" and all that follows through "use" on line 9 and insert ", such system or facility is exempt from this Act".

Page 183, strike lines 4 through 11 and insert the following:

(c) DISCHARGE LIMIT.—Section 402(a) (33 U.S.C. 1342(a)) is further amended by adding at the end the following:

"(7) QUANTITATION LEVEL.—

"(A) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall establish quantitation levels for pollutants based on the lowest level at which a pollutant can be reliably quantified on an interlaboratory basis for each test method published under section 304(h).

"(B) PERMIT LEVELS.—Whenever a limitation for a permit issued under this section is set at a level below the quantitation level established for that pollutant under subparagraph (A) for the test method specified in the permit, any measurement of the pollutant greater than the limitation but less than the quantitation level shall not be considered a violation of the permit. All measurements less than the quantitation level shall be deemed equal to zero for purposes of determining compliance with the limitation.".

(d) DISCHARGES UNDER PERMIT APPLICATIONS.—Section 402(k) (33 U.S.C. 1342(k)) is amended—

(1) in the first sentence by striking "except" and inserting "except for";

(2) in the second sentence—

(A) by striking "Until December 31, 1974, in" and inserting "In"; and

(B) by striking "(1) section 301, 306, or 402 of this Act, or (2)" and inserting "section 402 of this Act or"; and

(C) by inserting before the period at the end the following: ", and provided further that if the discharge results in a violation of effluent limitations or standards promulgated under section 301, 302, 303, 304, 306, or 307 of this Act that would be applicable upon issuance of a permit such discharge shall be considered unlawful under section 301 of this Act"; and

(3) by striking the last sentence.

Page 184, line 17, strike "be" and all that follows through "limitation" on line 18 and insert "have an affirmative defense to such alleged noncompliance".

Page 185, line 20, strike "be" and all that follows through "Act" on line 21 and insert "have an affirmative defense to such alleged noncompliance".

Page 187, line 12, strike the semicolon and insert "or are directly and proximately connected; or".

Page 187, strike lines 13 through 17.

Page 187, line 18, strike "(iii)" and insert "(ii)".

Page 187, line 23, strike "if, for conventional pollutants," and insert "for conventional pollutants, to the extent that the discharger demonstrates that".

Page 188, line 1, insert "or substantially similar to" after "the same as".

Page 188, line 12, strike "that" and all that follows through the period on line 13 and insert the following:

in circumstances that do not meet the requirements of paragraph (1), including circumstances in which the source of the intake water meets the maximum contaminant levels or treatment techniques for drinking water contaminants established pursuant to the Safe Drinking Water Act for the pollutant of concern. An appropriate credit for pollutants found in intake water is a credit that assures that an owner or operator of a point source is not required to remove, reduce, or treat the amount of any pollutant in an effluent below the amount of such pollutant that is present in the intake water for such facility, except to the extent that the level of such pollutant in the intake water will cause adverse water quality impact that would not otherwise occur.

Page 194, line 20, strike "paragraph (3)" and insert "paragraphs (2) and (3)".

Page 198, line 13, strike "approved within 180 days" and insert "submitted within 90 days".

Page 201, after line 2, insert the following:

"(F) DEEMED APPROVAL OF COMPLIANCE PLANS.—A compliance plan submitted under subparagraph (A)(iv) shall be deemed to be approved on the 90th day following the date of such submission, unless the Administrator notifies the remediating party before such 90th day that the plan has been disapproved.".

Page 201, line 8, strike "or its political subdivisions,".

Page 201, line 12, strike "a person described in clause (i)" and insert "a State or Indian tribe".

Page 202, line 4, strike "not actively mined or" and insert "neither actively mined nor".

Page 202, line 7, strike "section" and insert "subsection".

Page 203, line 17, strike "law" and insert "this Act".

Page 211, line 17, strike "**VEGETABLE OIL**" and insert "**NONPETROLEUM OIL PRODUCTS AND OIL SUBSTITUTES**".

Conform the table of contents of the bill accordingly.

Page 211, lines 18 and 19, strike "FATS, OILS, AND GREASES" and insert "PETROLEUM AND NONPETROLEUM PRODUCTS".

Page 211, lines 22 and 23, strike "a Federal law related to water pollution control," and insert "the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act,".

Page 212, line 2, strike "for—" and insert the following:

for petroleum and nonpetroleum oil products and oil substitutes, including animal fats, vegetable oils, and silicone fluids; and

Page 212, strike lines 3 through line 6.

Page 212, line 10, strike "fat and oil" and insert "petroleum and nonpetroleum oil products and oil substitutes".

Page 212, lines 13 through 15, strike "animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii)" and insert "petroleum products and nonpetroleum oil products and oil substitutes".

Page 213, strikes lines 15 and 16 and insert the following:

SEC. 508. PROGRAM AUTHORIZATIONS.

(a) LIMIT ON AUTHORIZATIONS.—No funds are authorized for any fiscal year after fiscal year 2000 for carrying out the programs and activities for which funds are authorized by

this Act, including amendments made by this Act.

(b) GENERAL PROGRAM AUTHORIZATIONS.—Section 517 (33 U.S.C. 1376) is amended—

Conform the table of contents of the bill accordingly.

Page 214, after line 7, insert the following:

(b) TREATMENT AS STATES.—Section 518(e) (33 U.S.C. 1377(e)) is amended—

(1) in paragraph (2)—

(A) by striking "water resources which are" and inserting "water resources within the exterior boundaries of a Federal Indian reservation which are on or appurtenant to lands";

(B) by inserting "or" after "Indians,";

(C) by striking "member of an Indian tribe" and inserting "member of the reservation's governing Indian tribe";

(D) by striking ", or otherwise within the borders of an Indian reservation"; and

(E) by striking "and" at the end;

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

(3) by adding at the end the following:

"(4) the Administrator's action does not authorize the Indian tribe to regulate lands owned in whole or in part by nonmembers of the tribe or the use of water resources on or appurtentant to such lands.".

Page 214, line 8, strike "(b)" and insert "(c)".

Page 215, line 4, strike "(c)" and insert "(d)".

Page 215, line 17, strike "(d)" and insert "(e)".

Page 216, line 1, strike "(e)" and insert "(f)".

Page 222, line 13, after "quality" insert "of navigable waters".

Page 224, line 22, after "year" insert "or ½ percent per year of the current valuation of such fund".

Page 225, line 19, strike "amended by striking" and insert the following:

amended—

(1) by striking "is consistent" and inserting "is not inconsistent"; and

(2) by striking

Page 226, line 2, before "treatment" insert "publicly owned".

Page 226, line 4, before the semicolon insert "without regard to the rank of such project on the State's priority list".

Page 243, line 15, after "Secretary" insert ", in consultation with the States,".

Page 246, line 2, before the semicolon insert "based on verifiable, objective science".

Page 247, strike line 3.

Page 247, line 4, strike "(iv)" and insert "(iii)".

Page 247, line 5, strike "(v)" and insert "(iv)".

Page 256, strike line 16 and all that follows through page 257, line 6, and insert the following:

"(A) ANALYSIS.—The Secretary shall determine whether to issue a permit for an activity in waters of the United States classified under subsection (c) as type A wetlands based on—

"(i) a sequential analysis that seeks, to the maximum extent practicable, to—

"(I) avoid adverse impact on the wetlands;

"(II) minimize such adverse impact on wetlands functions that cannot be avoided; and

"(III) compensate for any loss of wetland functions that cannot be avoided or minimized; and

"(ii) the public interest analysis described in paragraph (3).

"(B) WATER DEPENDENT ACTIVITY.—For purposes of subparagraph (A)(i)(I), if an activity is water dependent, an alternative in an area that is not wetlands or waters of the United States shall not be presumed to be available. A water dependent activity is an activity that requires access or proximity to or siting within the wetlands or waters of the United States in question to fulfill its basic purpose.

Page 257, line 7, strike "(B)" and insert "(C)".

Page 266, line 20, strike "and".

Page 266, after line 20, insert the following:

"(vi) provide, where appropriate, for dual use of wetlands within the mitigation bank, as long as the use other than providing compensatory mitigation under this section (I) shall not interfere with the functioning of such bank for providing such mitigation, and (II) shall not adversely impact wetlands or other waters of the United States; and

Page 266, line 21, strike "(vi)" and "(vii)".

Page 280, line 3, strike "or".

Page 280, line 20, strike "or".

Page 280, line 23, strike the period and insert "; or".

Page 280, after line 23, insert the following:

"(v) result from any silvicultural activity or practice undertaken on economic base lands; or

"(S) result from the conduct of recreational hunting or shooting.".

Page 284, strike lines 10 through 18.

Page 284, line 19, strike "(3)" and insert "(2)".

Page 285, line 1, strike "section" and all that follows through the final period on line 2 and insert the following:

subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.).

Page 285, lines 11 and 19, after "used" insert the following:

, or a good faith effort is shown by the owner or operator to use such lands,

Page 285, after line 20, insert the following:

"(D) DELINEATIONS GRANDFATHERED.—Delineations by the Secretary of Agriculture regarding wetlands on agricultural lands and associated nonagricultural lands that have become administratively final on or before the date of enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall not be subject to further delineation unless the owner requests a new delineation by the Secretary of Agriculture.

Page 289, after line 9, insert the following:

"(G) PERMISSION TO ENTER ONTO PRIVATE PROPERTY.—The Secretaries shall obtain written permission from the owner of private property before entering such property to conduct identification and classification of wetlands pursuant to this paragraph.

Page 293, line 4, before the semicolon insert the following:

; except that, in any case in which guidelines based on such criteria alone would prohibit the specification of a disposal site, the economic impact on navigation and anchorage shall be considered

Page 305, after line 4, insert the following:

"(8) TREATMENT OF EXISTING PROGRAMS.—Any State which has received approval to administer a program pursuant to this subsection before the date of the enactment of the Comprehensive Wetlands Conservation and Management Act of 1995 shall not be required to reapply for approval and shall be permitted to continue administering such program in a manner consistent with the provisions of this section. Upon receipt of a request from the Governor of such State, the Secretary, with the concurrence of the Governor, shall amend the program.

Page 312, after line 9, insert the following:

"(11) CERTIFICATION.—Notwithstanding any other provision of this Act, the Administrator shall not, either directly or indirectly, impose any requirement or condition in a certification required under section 401 that the Secretary determines is inconsistent with the provisions of this section.

Page 312, line 10, strike "(11)" and insert "(12)".

Page 316, after line 13, insert the following:

"(N) VERNAL POOLS.—The term 'vernal pools' means individual isolated wetlands that have exceptional waterfowl habitat functions and that exhibit the following characteristics:

"(i) an area greater than ½ acre;

"(ii) seasonal standing for no less than 45 consecutive days during the fall and winter in an average precipitation season;

"(iii) an impermeable subsurface hard pan soil layer that prevents subsurface water drainage or percolation; and

"(iv) a surface outlet for relief of water flow.

Page 316, line 14, strike "(N)" and insert "(O)".

Page 317, after line 16, insert the following:

"(31) The term 'farmed wetland' means those agricultural lands, as defined in section 404, and associated nonagricultural lands exhibiting wetlands characteristics, as delineated solely by the Secretary of Agriculture.

Page 317, line 17, strike "(31)" and insert "(32)".

Page 317, line 23, strike "(32)" and insert "(33)".

Page 318, line 4, strike "(33)" and insert "(34)".

Page 318, line 7, strike "(34)" and insert "(35)".

Page 318, line 12, strike "(35)" and insert "(36)".

Page 318, line 18, strike "(36)" and insert "(37)".

Page 318, line 22, strike "(37)" and insert "(38)".

Page 319, strike lines 5 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Pennsylvania [Mr. SHUSTER] and the gentleman from California [Mr. MINETA] will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it is my understanding after we engage in a colloquy that this en bloc amendment may be accepted. I would simply like to point out that the en bloc amendment improves upon this already widely supported bill that we reported out. This package of agreements includes agreements reached with chairmen of the other committees of jurisdiction, noncontroversial items brought to our attention since the committee markup, and other technical matters and miscellaneous issues.

The en bloc also reflects an ongoing dialog with State and local water officials including various provisions directly responding to the concerns and clarifying existing environmental safeguards in the bill.

I would emphasize it is very important that once the en bloc amendment is passed it will be open for amendment by title as we go through the bill so Member's rights are protected as we go through the bill and they will be able,

if they choose, to offer amendments to the en bloc amendment.

In the en bloc amendment we deal with several State issues, for examples, reducing from 20,000 to 10,000 the population ceiling for eligibility for the modification of secondary treatment requirements, this at the request of the States.

We delete, this is very important because the gentleman from New York in a previous comment complained about a 20-percent cap on type A wetlands, we delete the 20-percent cap for the type A wetlands for county parishes and boroughs, so this is in response to environmental requests, the various miscellaneous new matters in the bill. At each stage in the process matters have been brought to us, a very open process, and as a result we have included several noncontroversial items in this particular area.

Finally, with regard to committee issues, the package reflects agreements reached with the other committees of jurisdiction in several areas, technical and otherwise, and I would particularly focus on the fact that in this area we provide language that assures that the classification of isolated wetlands is based on sound science. This addresses a concern that all wetlands might be prejudged as falling into a single classification type. Environmentalists have talked with us about this and we have accepted their recommendations in this area.

And with regard to the technical amendments themselves, we have an important clarifying technical amendment that clarifies when local pretreatment limits apply in lieu of categorical pretreatment standards, such local limits must prevent the introduction of pollutants into the treatment works that will interfere with, pass through, or otherwise be incompatible with the treatment works, again, another proenvironmental provision which we have included in the en bloc amendments.

So, that is a very brief description of what I believe can be acceptable, particularly with emphasis that Member's rights are protected to offer amendments relating to any of these en bloc amendments as we move through the title-by-title amending process of this legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. MINETA. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would simply like to inquire of my friend from Pennsylvania, the distinguished chair of the full Committee on Transportation and Infrastructure, there is a provision in the en bloc amendment which affects EPA's authorities under section 401. And as the gentleman knows, the States are very concerned with any amendments which might affect section 401 and the rights of States to protect their water quality. It is my understanding that the provision is not intended to affect in any way the rights of States to protect water quality under section 401. Is that correct?

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. MINETA. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, the gentleman is correct. The provision in question is intended only to clarify that there is to be no interference from the EPA in the 401 certification process relating to section 404 permits.

Mr. MINETA. It is also my understanding that this provision is not intended to affect the broad issues of States' rights under section 401 and the relationship with hydropower relicensing; is that correct?

Mr. SHUSTER. The gentleman is correct.

Mr. MINETA. Mr. Chairman, it is also noted, as has my colleague from Pennsylvania, that each of the provisions included in the en bloc amendment will be amendable when the appropriate title in the bill is reached, and I understand that that is the way this works.

So, with that understanding, I have no objections to this en bloc amendment.

Mr. SHUSTER. I thank the gentleman.

Mr. MINETA. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Pennsylvania [Mr. SHUSTER].

The amendments were agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SAXTON

Mr. SAXTON. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. SAXTON:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Clean Water Amendments of 1995".

(b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.
Sec. 2. Definition.
Sec. 3. Amendment of Federal Water Pollution Control Act.

TITLE I—RESEARCH AND RELATED PROGRAMS

Sec. 101. Research, investigations, training, and information.
Sec. 102. State management assistance.
Sec. 103. Mine water pollution control.
Sec. 104. Water sanitation in rural and Native Alaska villages.
Sec. 105. Authorization of appropriations for Chesapeake program.
Sec. 106. Great Lakes management.

TITLE II—CONSTRUCTION GRANTS

Sec. 201. Uses of funds.
Sec. 202. Administration of closeout of construction grant program.
Sec. 203. Sewage collection systems.
Sec. 204. Value engineering review.
Sec. 205. Grants for wastewater treatment.

TITLE III—STANDARDS AND ENFORCEMENT

Sec. 301. Arid areas.
Sec. 302. Secondary treatment.
Sec. 303. Federal facilities.
Sec. 304. National estuary program.
Sec. 305. Nonpoint source management programs.
Sec. 306. Coastal zone management.
Sec. 307. Comprehensive watershed management.
Sec. 308. Revision of effluent limitations.

TITLE IV—PERMITS AND LICENSES

Sec. 401. Waste treatment systems for concentrated animal feeding operations.
Sec. 402. Municipal and industrial stormwater discharges.
Sec. 403. Intake credits.
Sec. 404. Combined sewer overflows.
Sec. 405. Abandoned mines.
Sec. 406. Beneficial use of biosolids.

TITLE V—GENERAL PROVISIONS

Sec. 501. Publicly owned treatment works defined.
Sec. 502. Implementation of water pollution laws with respect to vegetable oil.
Sec. 503. Needs estimate.
Sec. 504. Food processing and food safety.
Sec. 505. Audit dispute resolution.

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

Sec. 601. General authority for capitalization grants.
Sec. 602. Capitalization grant agreements.
Sec. 603. Water pollution control revolving loan funds.
Sec. 604. Allotment of funds.
Sec. 605. Authorization of appropriations.
Sec. 606. State nonpoint source water pollution control revolving funds.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Technical amendments.
Sec. 702. John A. Blatnik National Fresh Water Quality Research Laboratory.
Sec. 703. Wastewater service for colonias.
Sec. 704. Savings in municipal drinking water costs.

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

Sec. 801. Short title.
Sec. 802. Findings and purposes.
Sec. 803. State, local, and landowner technical assistance and cooperative training.
Sec. 804. Federal, State, and Local Government Coordinating Committee.
Sec. 805. State and local wetland conservation plans and strategies; grants to facilitate the implementation of section 404.
Sec. 806. National cooperative wetland ecosystem restoration strategy.
Sec. 807. Permits for discharge of dredged or fill material.
Sec. 808. Technical assistance to private landowners, codification of regulations and policies.
Sec. 809. Delineation.
Sec. 810. Fast track for minor permits.
Sec. 811. Compensatory mitigation.

Sec. 812. Cooperative mitigation ventures and mitigation banks.
Sec. 813. Wetlands monitoring and research.
Sec. 814. Administrative appeals.
Sec. 815. Cranberry production.
Sec. 816. State classification systems.
Sec. 817. Definitions.

TITLE IX—MISCELLANEOUS

Sec. 901. Obligations and expenditures subject to appropriations.

SEC. 2. DEFINITION.

In this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

SEC. 3. AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

TITLE I—RESEARCH AND RELATED PROGRAMS

SEC. 101. RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION.

(a) NATIONAL PROGRAMS.—Section 104(a) (33 U.S.C. 1254(a)) is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following:

"(7) in cooperation with appropriate Federal, State, and local agencies, conduct, promote, and encourage to the maximum extent feasible, in watersheds that may be significantly affected by nonpoint sources of pollution, monitoring and measurement of water quality by means and methods that will help to identify the relative contributions of particular nonpoint sources.".

(b) GRANTS TO LOCAL GOVERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(b)(3)) is amended by inserting "local governments," after "interstate agencies,".

(c) TECHNICAL ASSISTANCE FOR RURAL AND SMALL TREATMENT WORKS.—Section 104(b) (33 U.S.C. 1254(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(8) make grants to nonprofit organizations to provide technical assistance and training to rural and small publicly owned treatment works to enable such treatment works to achieve and maintain compliance with the requirements of this Act; and

"(9) disseminate information to rural, small, and disadvantaged communities with respect to the planning, design, construction, and operation of treatment works.".

(d) WASTEWATER TREATMENT IN IMPOVERISHED COMMUNITIES.—Section 104(q) (33 U.S.C. 1254(q)) is amended by adding at the end the following:

"(5) SMALL IMPOVERISHED COMMUNITIES.—

"(A) GRANTS.—The Administrator may make grants to States to provide assistance for planning, design, and construction of publicly owned treatment works to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or water treatment system and are severely economically disadvantaged, as determined by the Administrator.

"(B) AUTHORIZATION.—There is authorized to be appropriated to carry out this paragraph $50,000,000 per fiscal year for fiscal years 1996 through 2000.".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 104(u) (33 U.S.C. 1254(u)) is amended—

(1) by striking "and" before "(6)"; and

(2) by inserting before the period at the end the following: "; and (7) not to exceed $50,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(3), (b)(8), and (b)(9), except that not less than 20 percent of the sums appropriated pursuant to this clause shall be available for carrying out the provisions of subsections (b)(8) and (b)(9)".

SEC. 102. STATE MANAGEMENT ASSISTANCE.

Section 106(a) (33 U.S.C. 1256(a)) is amended—

(1) by striking "and" before "$75,000,000";

(2) by inserting after "1990" the following: ", such sums as may be necessary for each of fiscal years 1991 through 1995, and $150,000,000 per fiscal year for each of fiscal years 1996 through 2000"; and

(3) by adding at the end the following: "States or interstate agencies receiving grants under this section may use such funds to finance, with other States or interstate agencies, studies and projects on interstate issues relating to such programs.".

SEC. 103. MINE WATER POLLUTION CONTROL.

Section 107 (33 U.S.C. 1257) is amended to read as follows:

"SEC. 107. MINE WATER POLLUTION CONTROL.

"(a) ACIDIC AND OTHER TOXIC MINE DRAINAGE.—The Administrator shall establish a program to demonstrate the efficacy of measures for abatement of the causes and treatment of the effects of acidic and other toxic mine drainage within qualified hydrologic units affected by past coal mining practices for the purpose of restoring the biological integrity of waters within such units.

"(b) GRANTS.—

"(1) IN GENERAL.—Any State or Indian tribe may apply to the Administrator for a grant for any project which provides for abatement of the causes or treatment of the effects of acidic or other toxic mine drainage within a qualified hydrologic unit affected by past coal mining practices.

"(2) APPLICATION REQUIREMENTS.—An application submitted to the Administrator under this section shall include each of the following:

"(A) An identification of the qualified hydrologic unit.

"(B) A description of the extent to which acidic or other toxic mine drainage is affecting the water quality and biological resources within the hydrologic unit.

"(C) An identification of the sources of acidic or other toxic mine drainage within the hydrologic unit.

"(D) An identification of the project and the measures proposed to be undertaken to abate the causes or treat the effects of acidic or other toxic mine drainage within the hydrologic unit.

"(E) The cost of undertaking the proposed abatement or treatment measures.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share of the cost of a project receiving grant assistance under this section shall be 50 percent.

"(2) LANDS, EASEMENTS, AND RIGHTS-OF-WAY.—Contributions of lands, easements, and rights-of-way shall be credited toward the non-Federal share of the cost of a project under this section but not in an amount exceeding 25 percent of the total project cost.

"(3) OPERATION AND MAINTENANCE.—The non-Federal interest shall bear 100 percent of the cost of operation and maintenance of a project under this section.

"(d) PROHIBITED PROJECTS.—No acidic or other toxic mine drainage abatement or treatment project may receive assistance under this section if the project would adversely affect the free-flowing characteristics of any river segment within a qualified hydrologic unit.

"(e) APPLICATIONS FROM FEDERAL ENTITIES.—Any Federal entity may apply to the Administrator for a grant under this section for the purposes of an acidic or toxic mine drainage abatement or treatment project within a qualified hydrologic unit located on lands and waters under the administrative jurisdiction of such entity.

"(f) APPROVAL.—The Administrator shall approve an application submitted pursuant to subsection (b) or (e) after determining that the application meets the requirements of this section.

"(g) QUALIFIED HYDROLOGIC UNIT DEFINED.—For purposes of this section, the term 'qualified hydrologic unit' means a hydrologic unit—

"(1) in which the water quality has been significantly affected by acidic or other toxic mine drainage from past coal mining practices in a manner which adversely impacts biological resources; and

"(2) which contains lands and waters eligible for assistance under title IV of the Surface Mining and Reclamation Act of 1977.".

SEC. 104. WATER SANITATION IN RURAL AND NATIVE ALASKA VILLAGES.

(a) IN GENERAL.—Section 113 (33 U.S.C. 1263) is amended by striking the section heading and designation and subsections (a) through (f) and inserting the following:

"SEC. 113. ALASKA VILLAGE PROJECTS AND PROGRAMS.

"(a) GRANTS.—The Administrator is authorized to make grants—

"(1) for the development and construction of facilities which provide sanitation services for rural and Native Alaska villages;

"(2) for training, technical assistance, and educational programs relating to operation and maintenance for sanitation services in rural and Native Alaska villages; and

"(3) for reasonable costs of administering and managing grants made and programs and projects carried out under this section; except that not to exceed 4 percent of the amount of any grant made under this section may be made for such costs.

"(b) FEDERAL SHARE.—A grant under this section shall be 50 percent of the cost of the program or project being carried out with such grant.

"(c) SPECIAL RULE.—The Administrator shall award grants under this section for project construction following the rules specified in subpart H of part 1942 of title 7 of the Code of Federal Regulations.

"(d) GRANTS TO STATE FOR BENEFIT OF VILLAGES.—Grants under this section may be made to the State for the benefit of rural Alaska villages and Alaska Native villages.

"(e) COORDINATION.—In carrying out activities under this subsection, the Administrator is directed to coordinate efforts between the State of Alaska, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of the Interior, the Secretary of Agriculture, and the recipients of grants.

"(f) FUNDING.—There is authorized to be appropriated $25,000,000 for fiscal years beginning after September 30, 1995, to carry out this section.".

(b) CONFORMING AMENDMENT.—Section 113(g) is amended by inserting after "(g)" the following: "DEFINITIONS.—".

SEC. 105. AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE PROGRAM.

Section 117(d) (33 U.S.C. 1267(d)) is amended—

(1) in paragraph (1), by inserting "such sums as may be necessary for fiscal years 1991 through 1995, and $3,000,000 per fiscal year for each of fiscal years 1996 through 2000" after "1990,"; and

(2) in paragraph (2), by inserting "such sums as may be necessary for fiscal years 1991 through 1995, and $18,000,000 per fiscal year for each of fiscal years 1996 through 2000" after "1990,".

SEC. 106. GREAT LAKES MANAGEMENT.

(a) GREAT LAKES RESEARCH COUNCIL.—

(1) IN GENERAL.—Section 118 (33 U.S.C. 1268) is amended—

(A) in subsection (a)(3)—

(i) by striking subparagraph (E) and inserting the following:

"(E) 'Council' means the Great Lakes Research Council established by subsection (d)(1);";

(ii) by striking "and" at the end of subparagraph (I);

(iii) by striking the period at the end of subparagraph (J) and inserting "; and"; and

(iv) by adding at the end the following:

"(K) 'Great Lakes research' means the application of scientific or engineering expertise to explain, understand, and predict a physical, chemical, biological, or socioeconomic process, or the interaction of 1 or more of the processes, in the Great Lakes ecosystem.";

(B) by striking subsection (d) and inserting the following:

"(d) GREAT LAKES RESEARCH COUNCIL.—

"(1) ESTABLISHMENT OF COUNCIL.—There is established a Great Lakes Research Council.

"(2) DUTIES OF COUNCIL.—The Council—

"(A) shall advise and promote the coordination of Federal Great Lakes research activities to avoid unnecessary duplication and ensure greater effectiveness in achieving protection of the Great Lakes ecosystem through the goals of the Great Lakes Water Quality Agreement;

"(B) not later than 1 year after the date of the enactment of this subparagraph and biennially thereafter and after providing opportunity for public review and comment, shall prepare and provide to interested parties a document that includes—

"(i) an assessment of the Great Lakes research activities needed to fulfill the goals of the Great Lakes Water Quality Agreement;

"(ii) an assessment of Federal expertise and capabilities in the activities needed to fulfill the goals of the Great Lakes Water Quality Agreement, including an inventory of Federal Great Lakes research programs, projects, facilities, and personnel; and

"(iii) recommendations for long-term and short-term priorities for Federal Great Lakes research, based on a comparison of the assessments conducted under clauses (i) and (ii);

"(C) shall identify topics for and participate in meetings, workshops, symposia, and conferences on Great Lakes research issues;

"(D) shall make recommendations for the uniform collection of data for enhancing Great Lakes research and management protocols relating to the Great Lakes ecosystem;

"(E) shall advise and cooperate in—

"(i) improving the compatible integration of multimedia data concerning the Great Lakes ecosystem; and

"(ii) any effort to establish a comprehensive multimedia data base for the Great Lakes ecosystem; and

"(F) shall ensure that the results, findings, and information regarding Great Lakes research programs conducted or sponsored by the Federal Government are disseminated in a timely manner, and in useful forms, to interested persons, using to the maximum extent practicable mechanisms in existence on the date of the dissemination, such as the Great Lakes Research Inventory prepared by the International Joint Commission.

"(3) MEMBERSHIP.—

"(A) IN GENERAL.—The Council shall consist of 1 research manager with extensive knowledge of, and scientific expertise and experience in, the Great Lakes ecosystem from each of the following agencies and instrumentalities:

"(i) The Agency.

"(ii) The National Oceanic and Atmospheric Administration.

"(iii) The National Biological Service.

"(iv) The United States Fish and Wildlife Service.

"(v) Any other Federal agency or instrumentality that expends $1,000,000 or more for a fiscal year on Great Lakes research.

"(vi) Any other Federal agency or instrumentality that a majority of the Council membership determines should be represented on the Council.

"(B) NONVOTING MEMBERS.—At the request of a majority of the Council membership, any person who is a representative of a Federal agency or instrumentality not described in subparagraph (A) or any person who is not a Federal employee may serve as a nonvoting member of the Council.

"(4) CHAIRPERSON.—The chairperson of the Council shall be a member of the Council from an agency specified in clause (i), (ii), or (iii) of paragraph (3)(A) who is elected by a majority vote of the members of the Council. The chairperson shall serve as chairperson for a period of 2 years. A member of the Council may not serve as chairperson for more than 2 consecutive terms.

"(5) EXPENSES.—While performing official duties as a member of the Council, a member shall be allowed travel or transportation expenses under section 5703 of title 5, United States Code.

"(6) INTERAGENCY COOPERATION.—The head of each Federal agency or instrumentality that is represented on the Council—

"(A) shall cooperate with the Council in implementing the recommendations developed under paragraph (2);

"(B) on written request of the chairperson of the Council, may make available, on a reimbursable basis or otherwise, such personnel, services, or facilities as may be necessary to assist the Council in carrying out the duties of the Council under this section; and

"(C) on written request of the chairperson, shall furnish data or information necessary to carry out the duties of the Council under this section.

"(7) INTERNATIONAL COOPERATION.—The Council shall cooperate, to the maximum extent practicable, with the research coordination efforts of the Council of Great Lakes Research Managers of the International Joint Commission.

"(8) REIMBURSEMENT FOR REQUESTED ACTIVITIES.—Each Federal agency or instrumentality represented on the Council may reimburse another Federal agency or instrumentality or a non-Federal entity for costs associated with activities authorized under this subsection that are carried out by the other agency, instrumentality, or entity at the request of the Council.

"(9) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

"(10) EFFECT ON OTHER LAW.—Nothing in this subsection affects the authority of any Federal agency or instrumentality, under any law, to undertake Great Lakes research activities.";

(C) in subsection (e)—

(i) in paragraph (1) by striking "the Program Office and the Research Office shall prepare a joint research plan" and inserting "the Program Office, in consultation with the Council, shall prepare a research plan"; and

(ii) in paragraph (3)(A) by striking "the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States" and inserting "the Council, the Agency for Toxic Substances and Disease Registry, and Great Lakes States,"; and

(D) in subsection (h)—

(i) by adding "and" at the end of paragraph (1);

(ii) by striking "; and" at the end of paragraph (2) and inserting a period; and

(iii) by striking paragraph (3).

(2) CONFORMING AMENDMENT.—The second sentence of section 403(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1447b(a)) is amended by striking "Great Lakes Research Office authorized under" and inserting "Great Lakes Research Council established by".

(b) CONSISTENCY OF PROGRAMS WITH FEDERAL GUIDANCE.—Section 118(c)(2)(C) (33 U.S.C. 1268(c)(2)(C)) is amended by adding at the end the following: "For purposes of this section, a State's standards, policies, and procedures shall be considered consistent with such guidance if the standards, policies, and procedures are based on scientifically defensible judgments and policy choices made by the State after consideration of the guidance and provide an overall level of protection comparable to that provided by the guidance, taking into account the specific circumstances of the State's waters.".

(c) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—Section 118(c)(7) is amended by adding at the end the following:

"(D) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, in consultation and cooperation with the Assistant Secretary of the Army having responsibility for civil works, shall conduct at least 3 pilot projects involving promising technologies and practices to remedy contaminated sediments (including at least 1 full-scale demonstration of a remediation technology) at sites in the Great Lakes System, as the Administrator determines appropriate.

"(ii) SELECTION OF SITES.—In selecting sites for the pilot projects, the Administrator shall give priority consideration to—

"(I) the Ashtabula River in Ohio;

"(II) the Buffalo River in New York;

"(III) Duluth and Superior Harbor in Minnesota;

"(IV) the Fox River in Wisconsin;

"(V) the Grand Calumet River in Indiana; and

"(VI) Saginaw Bay in Michigan.

"(iii) DEADLINES.—In carrying out this subparagraph, the Administrator shall—

"(I) not later than 18 months after the date of the enactment of this subparagraph, identify at least 3 sites and the technologies and practices to be demonstrated at the sites (including at least 1 full-scale demonstration of a remediation technology); and

"(II) not later than 5 years after such date of enactment, complete at least 3 pilot projects (including at least 1 full-scale demonstration of a remediation technology).

"(iv) ADDITIONAL PROJECTS.—The Administrator, acting through the Program Office, in consultation and cooperation with the Assistant Secretary of the Army having responsibility for civil works, may conduct additional pilot- and full-scale pilot projects involving promising technologies and practices at sites in the Great Lakes System other than the sites selected under clause (i).

"(v) EXECUTION OF PROJECTS.—The Administrator may cooperate with the Assistant Secretary of the Army having responsibility for civil works to plan, engineer, design, and execute pilot projects under this subparagraph.

"(vi) NON-FEDERAL CONTRIBUTIONS.—The Administrator may accept non-Federal contributions to carry out pilot projects under this subparagraph.

"(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $3,500,000 for each of fiscal years 1996 through 2000.

"(E) TECHNICAL INFORMATION AND ASSISTANCE.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, may provide technical information and assistance involving technologies and practices for remediation of contaminated sediments to persons that request the information or assistance.

"(ii) TECHNICAL ASSISTANCE PRIORITIES.—In providing technical assistance under this subparagraph, the Administrator, acting through the Program Office, shall give special priority to requests for integrated assessments of, and recommendations regarding, remediation technologies and practices for contaminated sediments at Great Lakes areas of concern.

"(iii) COORDINATION WITH OTHER DEMONSTRATIONS.—The Administrator shall—

"(I) coordinate technology demonstrations conducted under this subparagraph with other federally assisted demonstrations of contaminated sediment remediation technologies; and

"(II) share information from the demonstrations conducted under this subparagraph with the other demonstrations.

"(iv) OTHER SEDIMENT REMEDIATION ACTIVITIES.—Nothing in this subparagraph limits the authority of the Administrator to carry out sediment remediation activities under other laws.

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $1,000,000 for each of fiscal years 1996 through 2000.".

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) RESEARCH AND MANAGEMENT.—Section 118(e)(3)(B) (33 U.S.C. 1268(e)(3)(B)) is amended by inserting before the period at the end the following: ", such sums as may be necessary for fiscal year 1995, and $4,000,000 per fiscal year for each of fiscal years 1996, 1997, and 1998".

(2) GREAT LAKES PROGRAMS.—Section 118(h) (33 U.S.C. 1268(h)) is amended—

(A) by striking "and" before "$25,000,000"; and

(B) by inserting before the period at the end of the first sentence the following: ", such sums as may be necessary for fiscal years 1992 through 1995, and $17,500,000 per fiscal year for each of fiscal years 1996 through 2000".

TITLE II—CONSTRUCTION GRANTS

SEC. 201. USES OF FUNDS.

(a) NONPOINT SOURCE PROGRAM.—Section 201(g)(1) (33 U.S.C. 1281(g)(1)) is amended by striking the period at the end of the first sentence and all that follows through the period at the end of the last sentence and inserting the following: "and for any purpose for which a grant may be made under sections 319(h) and 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution).".

(b) RETROACTIVE ELIGIBILITY.—Section 201(g)(1) is further amended by adding at the end the following: "The Administrator, with the concurrence of the States, shall develop procedures to facilitate and expedite the retroactive eligibility and provision of grant funding for facilities already under construction.".

SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRUCTION GRANT PROGRAM.

Section 205(g)(1) (33 U.S.C. 1285(g)(1)) is amended by adding at the end the following: "The Administrator may negotiate an annual budget with a State for the purpose of administering the closeout of the State's construction grants program under this title. Sums made available for administering such closeout shall be subtracted from amounts remaining available for obligation under the State's construction grant program under this title.".

SEC. 203. SEWAGE COLLECTION SYSTEMS.

Section 211(a) (33 U.S.C. 1291(a)) is amended—

(1) in clause (1) by striking "an existing collection system" and inserting "a collection system existing on the date of the enactment of the Clean Water Amendments of 1995"; and

(2) in clause (2)—

(A) by striking "an existing community" and inserting "a community existing on such date of enactment"; and

(B) by striking "sufficient existing" and inserting "sufficient capacity existing on such date of enactment".

SEC. 204. VALUE ENGINEERING REVIEW.

Section 218(c) (33 U.S.C. 1298(c)) is amended by striking "$10,000,000" and inserting "$25,000,000".

SEC. 205. GRANTS FOR WASTEWATER TREATMENT.

(a) COASTAL LOCALITIES.—The Administrator shall make grants under title II of the Federal Water Pollution Control Act to appropriate instrumentalities for the purpose of construction of treatment works (including combined sewer overflow facilities) to serve coastal localities. No less than $10,000,000 of the amount of such grants shall be used for water infrastructure improvements in New Orleans, no less than $3,000,000 of the amount of such grants shall be used for water infrastructure improvements in Bristol County, Massachusetts, and no less than ⅓ of the amount of such grants shall be used to assist localities that meet both of the following criteria:

(1) NEED.—A locality that has over $2,000,000,000 in category I treatment needs documented and accepted in the Environmental Protection Agency's 1992 Needs Survey database as of February 4, 1993.

(2) HARDSHIP.—A locality that has wastewater user charges, for residential use of 7,000 gallons per month based on Ernst & Young National Water and Wastewater 1992 Rate Survey, greater than 0.65 percent of 1989 median household income for the metropolitan statistical area in which such locality is located as measured by the Bureau of the Census.

(b) FEDERAL SHARE.—Notwithstanding section 202(a)(1) of the Federal Water Pollution Control Act, the Federal share of grants under subsection (a) shall be 80 percent of the cost of construction, and the non-Federal share shall be 20 percent of the cost of construction.

(c) SMALL COMMUNITIES.—The Administrator shall make grants to States for the purpose of providing assistance for the construction of treatment works to serve small communities as defined by the State; except that the term "small communities" may not include any locality with a population greater than 75,000. Funds made available to carry out this subsection shall be allotted by the Administrator to the States in accordance with the allotment formula contained in section 604(a) of the Federal Water Pollution Control Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under this section $300,000,000 for fiscal year 1996. Such sums shall remain available until expended and shall be equally divided between subsections (a) and (c) of this section. Such authorization of appropriation shall take effect only if the total amount appropriated for fiscal year 1996 to carry out title VI of the Federal Water Pollution Control Act is at least $3,000,000,000.

TITLE III—STANDARDS AND ENFORCEMENT

SEC. 301. ARID AREAS.

(a) CONSTRUCTED WATER CONVEYANCES.—Section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

"(D) STANDARDS FOR CONSTRUCTED WATER CONVEYANCES.—

"(i) RELEVANT FACTORS.—If a State exercises jurisdiction over constructed water conveyances in establishing standards under this section, the State may consider the following:

"(I) The existing and planned uses of water transported in a conveyance system.

"(II) Any water quality impacts resulting from any return flow from a constructed water conveyance to navigable waters and the need to protect downstream users.

"(III) Management practices necessary to maintain the conveyance system.

"(IV) State or regional water resources management and water conservation plans.

"(V) The authorized purpose for the constructed conveyance.

"(ii) RELEVANT USES.—If a State adopts or reviews water quality standards for constructed water conveyances, it shall not be required to establish recreation, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or such uses impede the authorized uses of the conveyance system.".

(b) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

"(9) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—

"(A) DEVELOPMENT.—Not later than 2 years after the date of the enactment of this paragraph, and after providing notice and opportunity for public comment, the Administrator shall develop and publish—

"(i) criteria for ephemeral and effluent-dependent streams; and

"(ii) guidance to the States on development and adoption of water quality standards applicable to such streams.

"(B) FACTORS.—The criteria and guidance developed under subparagraph (A) shall take

into account the limited ability of ephemeral and effluent-dependent streams to support aquatic life and certain designated uses, shall include consideration of the role the discharge may play in maintaining the flow or level of such waters, and shall promote the beneficial use of reclaimed water pursuant to section 101(a)(10).".

(c) FACTORS REQUIRED TO BE CONSIDERED BY ADMINISTRATOR.—Section 303(c)(4) is amended by adding at the end the following: "In revising or adopting any new standard for ephemeral or effluent-dependent streams under this paragraph, the Administrator shall consider the factors referred to in section 304(a)(9)(B).".

(d) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(21) The term 'effluent-dependent stream' means a stream or a segment thereof—

"(A) with respect to which the flow (based on the annual average expected flow, determined by calculating the average mode over a 10-year period) is primarily attributable to the discharge of treated wastewater;

"(B) that, in the absence of a discharge of treated wastewater and other primary anthropogenic surface or subsurface flows, would be an ephemeral stream; or

"(C) that is an effluent-dependent stream under applicable State water quality standards.

"(22) The term 'ephemeral stream' means a stream or segments thereof that flows periodically in response to precipitation, snowmelt, or runoff.

"(23) The term 'constructed water conveyance' means a manmade water transport system constructed for the purpose of transporting water in a waterway that is not and never was a natural perennial waterway.".

SEC. 302. SECONDARY TREATMENT.

(a) COASTAL DISCHARGES.—Section 304(d) (33 U.S.C. 1314(d)) is amended by adding at the end the following:

"(5) COASTAL DISCHARGES.—For purposes of this subsection, any municipal wastewater treatment facility shall be deemed the equivalent of a secondary treatment facility if each of the following requirements is met:

"(A) The facility employs chemically enhanced primary treatment.

"(B) The facility, on the date of the enactment of this paragraph, discharges through an ocean outfall into an open marine environment greater than 4 miles offshore into a depth greater than 300 feet.

"(C) The facility's discharge is in compliance with all local and State water quality standards for the receiving waters.

"(D) The facility's discharge will be subject to an ocean monitoring program acceptable to relevant Federal and State regulatory agencies.".

(b) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

"(s) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

"(1) IN GENERAL.—The Administrator, with the concurrence of the State, shall issue a 10-year permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters which are at least 150 feet deep through an ocean outfall which discharges at least 1 mile offshore, if the applicant demonstrates that—

"(A) there is an applicable ocean plan and the facility's discharge is in compliance with all local and State water quality standards for the receiving waters;

"(B) the facility's discharge will be subject to an ocean monitoring program determined to be acceptable by relevant Federal and State regulatory agencies;

"(C) the applicant has an Agency approved pretreatment plan in place; and

"(D) the applicant, at the time such modification becomes effective, will be discharging effluent which has received at least chemically enhanced primary treatment and achieves a monthly average of 75 percent removal of suspended solids.

"(2) DISCHARGE OF ANY POLLUTANT INTO MARINE WATERS DEFINED.—For purposes of this subsection, the term 'discharge of any pollutant into marine waters' means a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement.

"(3) DEADLINE.—On or before the 90th day after the date of submittal of an application for a modification under paragraph (1), the Administrator shall issue to the applicant a modified permit under section 402 or a written determination that the application does not meet the terms and conditions of this subsection.

"(4) EFFECT OF FAILURE TO RESPOND.—If the Administrator does not respond to an application for a modification under paragraph (1) on or before the 90th day referred to in paragraph (3), the application shall be deemed approved and the modification sought by the applicant shall be in effect for the succeeding 10-year period.".

(2) EXTENSION OF APPLICATION DEADLINE.—Section 301(j) (33 U.S.C. 1311(j)) is amended by adding at the end the following:

"(6) EXTENSION OF APPLICATION DEADLINE.—In the 365-day period beginning on the date of the enactment of this paragraph, municipalities may apply for a modification pursuant to subsection (s) of the requirements of subsection (b)(1)(B) of this section.".

(c) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

"(t) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—The Administrator, with the concurrence of the State, or a State with an approved program under section 402 may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works serving a community of 20,000 people or fewer if the applicant demonstrates to the satisfaction of the Administrator that—

"(1) the effluent from such facility originates primarily from domestic users; and

"(2) such facility utilizes a properly constructed and operated alternative treatment system (including recirculating sand filter systems, constructed wetlands, and oxidation lagoons) which is equivalent to secondary treatment or will provide in the receiving waters and watershed an adequate level of protection to human health and the environment and contribute to the attainment of water quality standards.".

(d) PUERTO RICO.—Section 301 (33 U.S.C. 1311) is further amended by adding at the end the following:

"(u) PUERTO RICO.—

"(1) STUDY BY GOVERNMENT OF PUERTO RICO.—Not later than 3 months after the date of the enactment of this section, the Government of Puerto Rico may, after consultation with the Administrator, initiate a study of the marine environment of Anasco Bay off the coast of the Mayaguez region of Puerto Rico to determine the feasibility of constructing a deepwater outfall for the publicly owned treatment works located at Mayaguez, Puerto Rico. Such study shall recommend one or more technically feasible locations for the deepwater outfall based on the effects of such outfall on the marine environment.

"(2) APPLICATION FOR MODIFICATION.—Notwithstanding subsection (j)(1)(A), not later than 18 months after the date of the enactment of this section, an application may be submitted for a modification pursuant to subsection (h) of the requirements of subsection (b)(1)(B) of this section by the owner of the publicly owned treatment works at Mayaguez, Puerto Rico, for a deepwater outfall at a location recommended in the study conducted pursuant to paragraph (1).

"(3) INITIAL DETERMINATION.—On or before the 90th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue to the applicant a draft initial determination regarding the modification of the existing permit.

"(4) FINAL DETERMINATION.—On or before the 270th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue a final determination regarding such modification.

"(5) EFFECTIVENESS.—If a modification is granted pursuant to an application submitted under this subsection, such modification shall be effective only if the new deepwater outfall is operational within 5 years after the date of the enactment of this subsection. In all other aspects, such modification shall be effective for the period applicable to all modifications granted under subsection (h).".

SEC. 303. FEDERAL FACILITIES.

(a) APPLICATION OF CERTAIN PROVISIONS.—Section 313(a) (33 U.S.C. 1323(a)) is amended by striking all preceding subsection (b) and inserting the following:

"SEC. 313. FEDERAL FACILITIES POLLUTION CONTROL.

"(a) APPLICABILITY OF FEDERAL, STATE, INTERSTATE, AND LOCAL LAWS.—

"(1) IN GENERAL.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

"(A) having jurisdiction over any property or facility, or

"(B) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants,

and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity, including the payment of reasonable service charges.

"(2) TYPES OF ACTIONS COVERED.—Paragraph (1) shall apply—

"(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement),

"(B) to the exercise of any Federal, State, or local administrative authority, and

"(C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.

"(3) PENALTIES AND FINES.—The Federal, State, interstate, and local substantive and procedural requirements, administrative authority, and process and sanctions referred to in paragraph (1) include all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

"(4) SOVEREIGN IMMUNITY.—

"(A) WAIVER.—The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any requirement, administrative authority, and process and sanctions referred to in paragraph (1) (including any injunctive relief, any administrative order, any civil or administrative penalty or fine referred to in paragraph (3), or any reasonable service charge).

"(B) PROCESSING FEES.—The reasonable service charges referred to in this paragraph include fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local water pollution regulatory program.

"(5) EXEMPTIONS.—

"(A) GENERAL AUTHORITY OF PRESIDENT.—The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any requirement to which paragraph (1) applies if the President determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 306 or 307 of this Act.

"(B) LIMITATION.—No exemptions shall be granted under subparagraph (A) due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(C) TIME PERIOD.—Any exemption under subparagraph (A) shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods of not to exceed 1 year upon the President's making a new determination.

"(D) MILITARY PROPERTY.—In addition to any exemption of a particular effluent source, the President may, if the President determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at 3-year intervals.

"(E) REPORTS.—The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the President's reason for granting such exemption.

"(6) VENUE.—Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with chapter 89 of title 28, United States Code.

"(7) PERSONAL LIABILITY OF FEDERAL EMPLOYEES.—No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local water pollution law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer.

"(8) CRIMINAL SANCTIONS.—An agent, employee, or officer of the United States shall be subject to any criminal sanction (including any fine or imprisonment) under any Federal or State water pollution law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction.".

(b) FUNDS COLLECTED BY A STATE.—Section 313 (33 U.S.C. 1323) is further amended by adding at the end the following:

"(c) LIMITATION ON STATE USE OF FUNDS.—Unless a State law in effect on the date of the enactment of this subsection or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government in penalties and fines imposed for the violation of a substantive or procedural requirement referred to in subsection (a) shall be used by a State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.".

(c) ENFORCEMENT.—Section 313 is further amended by adding at the end the following:

"(d) FEDERAL FACILITY ENFORCEMENT.—

"(1) ADMINISTRATIVE ENFORCEMENT BY EPA.—The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act.

"(2) PROCEDURE.—The Administrator shall initiate an administrative enforcement action against a department, agency, or instrumentality under this subsection in the same manner and under the same circumstances as an action would be initiated against any other person under this Act. The amount of any administrative penalty imposed under this subsection shall be determined in accordance with section 309(d) of this Act.

"(3) VOLUNTARY SETTLEMENT.—Any voluntary resolution or settlement of an action under this subsection shall be set forth in an administrative consent order.

"(4) CONFERRAL WITH EPA.—No administrative order issued to a department, agency, or instrumentality under this section shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.".

(d) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Section 313 is further amended by adding at the end the following:

"(e) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order and the violator has either paid a penalty or fine assessed under this subsection or is subject to an enforceable schedule of corrective actions, shall not be the subject of an action under section 505 of this Act. In any action under this subsection, any citizen may intervene as a matter of right.".

(e) DEFINITION OF PERSON.—Section 502(5) (33 U.S.C. 1362(5)) is amended by inserting before the period at the end the following: "and includes any department, agency, or instrumentality of the United States".

(f) DEFINITION OF RADIOACTIVE MATERIALS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(24) The term 'radioactive materials' includes source materials, special nuclear materials, and byproduct materials (as such terms are defined under the Atomic Energy Act of 1954) which are used, produced, or managed at facilities not licensed by the Nuclear Regulatory Commission; except that such term does not include any material which is discharged from a vessel or other facility covered by Executive Order 12344 (42 U.S.C. 7158 note; relating to the Naval Nuclear Propulsion Program).".

(g) CONFORMING AMENDMENTS.—Section 313(b) (33 U.S.C. 1323(b)) is amended—

(1) by striking "(b)(1)" and inserting the following:

"(b) WASTEWATER FACILITIES.—

"(1) COOPERATION FOR USE OF WASTEWATER CONTROL SYSTEMS.—";

(2) in paragraph (2) by inserting "LIMITATION ON CONSTRUCTION.—" before "Construction"; and

(3) by moving paragraphs (1) and (2) 2 ems to the right.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall only apply to violations occurring after such date of enactment.

SEC. 304. NATIONAL ESTUARY PROGRAM.

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

(1) The Nation's estuaries are a vital natural resource to which many regional economies are closely tied.

(2) Many of the Nation's estuaries are under a severe threat from point source pollution and polluted run-off (nonpoint source pollution) and from habitat alteration and destruction.

(3) Only through expanded investments in waste water treatment and other water and sediment pollution control and prevention efforts can the environmental and economic values of the Nation's estuaries be restored and protected.

(4) The National Estuary Program created under the Federal Water Pollution Control Act has significantly advanced the Nation's understanding of the declining condition of the Nation's estuaries.

(5) The National Estuary Program has also provided precise information about the corrective and preventative measures required to reverse the degradation of water and sediment quality and to halt the alteration and destruction of vital habitat in the Nation's estuaries.

(6) The level of funding available to States, municipalities, and the Environmental Protection Agency for implementation of approved conservation and management plans is inadequate, and additional financial resources must be provided.

(7) Funding for implementation of approved conservation and management plans should be provided under the State revolving loan fund program authorized by title VI of the Federal Water Pollution Control Act.

(8) Authorization levels for State revolving loan fund capitalization grants should be increased by an amount necessary to ensure the achievement of the goals of the Federal Water Pollution Control Act.

(b) TECHNICAL AMENDMENT.—Section 320(a)(2)(B) (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

"(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Charlotte Harbor, Florida; Barnegat Bay, New Jersey; and Peconic Bay, New York.".

(c) GRANTS.—Section 320(g)(2) (33 U.S.C. 1330(g)(2)) is amended by inserting "and implementation monitoring" after "development".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 320(i) (33 U.S.C. 1330(i)) is amended by striking "1987" and all that follows through "1991" and inserting the following: "1987 through 1991, such sums as may be necessary for fiscal years 1992 through 1995, and $19,000,000 per fiscal year for each of fiscal years 1996 through 2000".

SEC. 305. NONPOINT SOURCE MANAGEMENT PROGRAMS.

(a) REVIEW AND REVISION.—Section 319(b) (33 U.S.C. 1329(b)) is amended by adding at the end the following:

"(5) REVIEW AND REVISION.—Not later than 18 months after the date of the enactment of this paragraph, the State shall review and revise the report required by this subsection and submit such revised report to the Administrator for approval.".

(b) APPROVAL OR DISAPPROVAL OF MANAGEMENT PROGRAMS.—Section 319(d)(1) (33 U.S.C. 1329(d)(1)) is amended by inserting "or revised management program" after "management program" each place it appears.

(c) GRANTS FOR PROTECTING GROUND WATER QUALITY.—Section 319(i)(3) (33 U.S.C. 1329(i)(3)) is amended by striking "$150,000" and inserting "$500,000".

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 319(j) (33 U.S.C. 1329(j)) is amended—

(1) by striking "and" before "$130,000,000";

(2) by inserting after "1991" the following: ", such sums as may be necessary for fiscal years 1992 through 1995, $100,000,000 for fiscal year 1996, $150,000,000 for fiscal year 1997, $200,000,000 for fiscal year 1998, $250,000,000 for fiscal year 1999, and $300,000,000 for fiscal year 2000"; and

(3) by striking "$7,500,000" and inserting "$25,000,000".

(e) AGRICULTURAL INPUTS.—Section 319 (33 U.S.C. 1329) is amended by adding at the end the following:

"(o) AGRICULTURAL INPUTS.—For the purposes of this Act, any land application of livestock manure shall not be considered a point source and shall be subject to enforcement only under this section.".

SEC. 306. COASTAL ZONE MANAGEMENT.

Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1451 note) is amended—

(1) in subsection (a)(1)—

(A) by inserting "(A)" after "PROGRAM DEVELOPMENT.—"; and

(B) by adding at the end the following:

"(B) A State that has not received Federal approval for the State's core coastal management program pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) shall have 30 months from the date of approval of such program to submit a Coastal Nonpoint Pollution Program pursuant to this section. Any such State shall also be eligible for any extension of time for submittal of the State's nonpoint program that may be received by a State with a federally approved coastal management program.";

(2) in subsection (b), in the matter preceding paragraph (1), by striking "to protect coastal waters generally" and inserting "to restore and protect coastal waters where the State has determined that coastal waters are threatened or significantly degraded";

(3) in subsection (b)(3)—

(A) by striking "The implementation" and inserting "A schedule for the implementation"; and

(B) by inserting ", and no less often than once every 5 years," after "from time to time";

(4) in subsection (b) by adding at the end the following:

"(7) IDENTIFICATION OF PRIORITY AREAS.—A prioritization of the areas in the State in which management measures will be implemented.";

(5) in subsection (c) by adding at the end the following:

"(5) CONDITIONAL APPROVAL.—The Secretary and Administrator may grant conditional approval to a State's program where the State requests additional time to complete the development of its program. During the period during which the State's program is subject to conditional approval, the penalty provisions of paragraphs (3) and (4) shall not apply.";

(6) in subsection (h)(1) by striking ", 1993, and 1994" and inserting "through 2000"; and

(7) in subsection (h)(2)(B)(iv) by striking "fiscal year 1995" and inserting "each of fiscal years 1995 through 2000".

SEC. 307. COMPREHENSIVE WATERSHED MANAGEMENT.

(a) IN GENERAL.—Title III (33 U.S.C. 1300–1330) is amended by adding at the end the following:

"SEC. 321. COMPREHENSIVE WATERSHED MANAGEMENT.

"(a) FINDINGS, PURPOSE, AND DEFINITIONS.—

"(1) FINDINGS.—Congress finds that comprehensive watershed management will further the goals and objectives of this Act by—

"(A) identifying more fully water quality impairments and the pollutants, sources, and activities causing the impairments;

"(B) integrating water protection quality efforts under this Act with other natural resource protection efforts, including Federal efforts to define and protect ecological systems (including the waters and the living resources supported by the waters);

"(C) defining long-term social, economic, and natural resource objectives and the water quality necessary to attain or maintain the objectives;

"(D) increasing, through citizen participation in the watershed management process, public support for improved water quality;

"(E) identifying priority water quality problems that need immediate attention; and

"(F) identifying the most cost-effective measures to achieve the objectives of this Act.

"(2) PURPOSE.—The purpose of this section is to encourage comprehensive watershed management in maintaining and enhancing water quality, in restoring and protecting living resources supported by the waters, and in ensuring waters of a quality sufficient to meet human needs, including water supply and recreation.

"(3) DEFINITIONS.—In this section, the following definitions apply:

"(A) ECOSYSTEM.—The term 'ecosystem' means the community of plants and animals (including humans) and the environment (including surface water, the ground water with which it interacts, and riparian areas) upon which that community depends.

"(B) ENVIRONMENTAL OBJECTIVES.—The term 'environmental objectives' means the goals specified by States or State-designated watershed management entities to protect, restore, and maintain water resources and aquatic ecosystems within a watershed, including applicable water quality standards and wetlands protection goals established under the Act.

"(C) STATE.—The term 'State' includes Indian tribes eligible under section 518(e).

"(b) STATE WATERSHED PROGRAM.—

"(1) SUBMITTAL.—A State, at any time, may submit to the Administrator for approval a watershed management program for the State.

"(2) APPROVAL.—The Administrator shall approve a State watershed program submitted under paragraph (1) if the program, at a minimum, contains the following elements:

"(A) An identification of the State agency generally responsible for overseeing and approving watershed management plans and a designation of watershed management entities and lead responsibilities for such entities. Such entities may include other State agencies and sub-State agencies.

"(B) A description of the scope of the program. In determining the scope of the program, the State may choose to address all watersheds within the State over a period of time or to concentrate efforts on selected watersheds. Within each watershed, the issues to be addressed should be based on a comprehensive analysis of the problems within the watershed. The scope of the program may expand over a period of time both in terms of the number of watersheds and the issues addressed by the program.

"(C) An identification of watershed management units for which watershed management plans will be developed. In selecting such units, the State shall consider those waters in the State that are water quality threatened or impaired or are otherwise in need of special protection. To the extent practicable, the boundaries of each watershed management unit shall be consistent with United States Geological Service hydrological units.

"(D) A description of activities required of watershed management entities (as specified under subsection (f)(1)) and a description of the State's approval process for watershed management plans.

"(E) A specification of an effective public participation process, including procedures to encourage the public to participate in developing and implementing watershed management plans.

"(F) An identification of the statewide environmental objectives that will be pursued in each watershed. Such objectives, at a minimum, shall include State water quality standards and goals under this Act, and, as appropriate, other objectives such as habitat restoration and biological diversity.

"(2) DEADLINE.—The Administrator, after consultation with other Federal agencies, shall approve or disapprove a State watershed program submitted under paragraph (1) on or before the 180th day following the date

of the submittal. If a State watershed program is disapproved, the State may modify and resubmit its program under paragraph (1).

"(3) ANNUAL REPORT.—A State with an approved watershed program under this subsection shall provide to the Administrator an annual report summarizing the status of the program, including a description of any modifications to the program. An annual report submitted under this section may be used by the State to satisfy reporting requirements under sections 106, 314, 319, and 320.

"(4) EFFECTIVE PERIOD OF APPROVALS.—An approval of a State watershed program under paragraph (2) shall remain in effect for a 5-year period beginning on the date of the approval and may be renewed by the Administrator.

"(5) WITHDRAWAL OF APPROVAL.—Whenever the Administrator determines after public hearing that a State is not administering a watershed program approved under paragraph (2) in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed 90 days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

"(c) DESIGNATION OF ADDITIONAL WATERSHED MANAGEMENT UNITS AND ENTITIES.—A State with an approved watershed program under this section may modify such program at any time in order to designate additional watershed management units and entities, including lead responsibilities, for the purpose of developing and implementing watershed management plans.

"(d) ELIGIBLE WATERSHED MANAGEMENT AND PLANNING ACTIVITIES.—The following watershed management activities are eligible to receive assistance from the Administrator under sections 205(j), 319(h), and 604(b):

"(1) Characterizing waters and land uses.

"(2) Identifying problems within a watershed.

"(3) Selecting short-term and long-term goals for watershed management.

"(4) Developing and implementing measures and practices to meet identified goals.

"(5) Identifying and coordinating projects and activities necessary to restore and maintain water quality or meet other environmental objectives within the watershed.

"(6) Identifying the appropriate institutional arrangements to carry out an approved watershed management plan.

"(7) Updating an approved watershed management plan.

"(8) Any other activities deemed appropriate by the Administrator.

"(e) SUPPORT FOR WATERSHED MANAGEMENT AND PLANNING.—

"(1) INTERAGENCY COMMITTEE.—There is established an interagency committee to support comprehensive watershed management and planning. The President shall appoint the members of the committee. The members shall include a representative from each Federal agency that carries out programs and activities that may have a significant impact on water quality or other natural resource values that may be appropriately addressed through comprehensive watershed management.

"(2) USE OF OTHER FUNDS UNDER THIS ACT.—The planning and implementation activities carried out by a management entity pursuant to this section may be carried out with funds made available through the State pursuant to sections 205(j), 319(h), and 604(b).

"(f) APPROVED PLANS.—

"(1) MINIMUM REQUIREMENTS.—A State with an approved watershed program may approve a watershed management plan when such plan satisfies the following conditions:

"(A) If the watershed includes waters that are not meeting applicable water quality standards under this Act at the time of submission, the plan—

"(i) identifies the environmental objectives of the plan including, at a minimum, State water quality standards and goals under this Act, and any other environmental objectives the planning entity deems appropriate;

"(ii) identifies the stressors, pollutants, and sources causing the impairment;

"(iii) identifies actions necessary to achieve the environmental objectives of the plan, including source reduction of pollutants to achieve any allocated load reductions consistent with the requirements of section 303(d) and the priority for implementing such actions;

"(iv) contains an implementation plan, with schedules, milestones, projected completion dates, and the identification of those persons responsible for implementing the actions, demonstrating that water quality standards will be attained as expeditiously as practicable, but not later than deadlines in applicable sections of this Act and all other environmental objectives identified in the watershed management plan will be attained as expeditiously as practicable;

"(v) contains an effective public participation process in the development and implementation of the plan;

"(vi) specifies a process to monitor and evaluate progress toward meeting environmental objectives; and

"(vii) specifies a process to revise the plan as needed.

"(B) For those waters in the watershed attaining water quality standards at the time of submission (including threatened waters), the plan identifies those projects and activities necessary to maintain water quality standards and attain or maintain other environmental objectives in the future.

"(2) TERMS OF PLAN AND PLAN APPROVAL.—Each plan submitted and approved under this subsection shall extend for a period of not less than 5 years and include a planning and implementation schedule with milestones and completion dates within that period. The approval by the State of a plan shall apply for a period not exceed 5 years. A revised and updated plan may be submitted prior to the expiration of the period specified in the preceding sentence for approval pursuant to the same conditions and requirements that apply to an initial plan for a watershed that is approved pursuant to this subsection.

"(g) INCENTIVES FOR WATERSHED MANAGEMENT.—

"(1) POINT SOURCE PERMITS.—

"(A) IN GENERAL.—Notwithstanding section 301(b)(1)(C), a permit may be issued under section 402 with a limitation that does not meet water quality standards, if—

"(i) the receiving water is in a watershed with an approved watershed plan;

"(ii) the plan includes enforceable requirements under State or local law for nonpoint source pollutant load reductions that in combination with point source requirements will meet water quality standards prior to the expiration of plan; and

"(iii) the point source does not have a history of significant noncompliance with its permit effluent limitations, as determined by the Administrator or the State (in the case with an approved permit under section 402).

"(B) SYNCHRONIZED PERMIT TERMS.—Notwithstanding section 402(b)(1)(B), the term of a permit issued under section 402 may be extended by 5 years if the discharge is located in a watershed planning area for which a watershed management plan is to be developed.

"(C) 10-YEAR PERMIT TERMS.—Notwithstanding section 402(b)(1)(B), the term of a permit issued under section 402 may be extended to 10 years for any point source located in a watershed management unit for which a watershed management plan has been approved if the plan provides for the attainment and maintenance of water quality standards (including designated uses) in the affected waters and unless receiving waters are not meeting water quality standards due to the point source discharge. Such permits may be revised at any time if necessary to meet water quality standards.

"(2) NONPOINT SOURCE CONTROLS.—Not later than 30 months after the date of the enactment of this section, a State with an approved watershed program under this section may make a showing to the Administrator that nonpoint source management practices different from those established in national guidance issued by the Administrator under section 319 will attain water quality standards as expeditiously as practicable and not later than the deadlines established by this Act. If the Administrator is satisfied with such showing, then the Administrator may approve the State's nonpoint source management program that relies on such practices as meeting the requirements of section 319. Alternative watershed nonpoint source control practices must be identified in the watershed management plan adopted under subsection (f)(2) of this section.

"(3) FUNDING.—The Administrator may provide assistance to a State with an approved watershed management program under this section in the form of a multipurpose grant that would provide for single application, workplan and review, matching, oversight, and end-of-year closeout requirements for grant funding under sections 104(b)(3), 104(g), 106, 314(b), 319, 320, and 604(b). A State with an approved multipurpose grant may focus activities funded under such sections on a priority basis consistent with State-approved watershed management plans.

"(h) GUIDANCE.—Not later than 12 months after the date of the enactment of this section, and after consultation with other appropriate agencies, the Administrator shall issue guidance on recommended provisions to be included in State watershed programs and State-approved watershed management plans.

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator for providing grants to States to assist such States in carrying out activities under this section $25,000,000 per fiscal year for each of fiscal years 1996 through 2000.".

(b) CONFORMING AMENDMENT.—Section 401(a)(1) (33 U.S.C. 1341(a)(1)) is amended by inserting "and with the provisions of a management plan approved by a State under section 321 of this Act" before the period at the end of the first sentence.

SEC. 308. REVISION OF EFFLUENT LIMITATIONS.

(a) ELIMINATION OF REQUIREMENT FOR ANNUAL REVISION.—Section 304(b) (33 U.S.C. 1314(b)) is amended in the matter preceding paragraph (1) by striking "and, at least annually thereafter," and inserting "and thereafter shall".

(b) SPECIAL RULE.—Section 304(b) (33 U.S.C. 1314(b)) is amended by striking the period at the end of the first sentence and inserting the following: "; except that guidelines issued under paragraph (1)(A) addressing pollutants identified pursuant to subsection (a)(4) shall not be revised after February 15, 1995, to be more stringent unless such revised guidelines meet the requirements of paragraph (4)(A).".

TITLE IV—PERMITS AND LICENSES

SEC. 401. WASTE TREATMENT SYSTEMS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS.

Section 402(a) is amended by adding at the end the following:

"(6) CONCENTRATED ANIMAL FEEDING OPERATIONS.—For purposes of this section, waste treatment systems, including retention ponds or lagoons, used to meet the requirements of this Act for concentrated animal feeding operations, are not waters of the United States. An existing concentrated animal feeding operation that uses a natural topographic impoundment or structure on the effective date of this Act, which is not hydrologically connected to any other waters of the United States, as a waste treatment system or wastewater retention facility may continue to use that natural topographic feature for waste storage regardless of its size, capacity, or previous use.".

SEC. 402. MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES.

(a) DEADLINES.—Section 402(p) (33 U.S.C. 1343(p)) is amended—

(1) in paragraph (1) by striking "1994" and inserting "2005"; and

(2) in paragraph (6) by striking "1993" and inserting "2005".

(b) PROHIBITION ON NUMERIC EFFLUENT LIMITATIONS FOR MUNICIPAL DISCHARGES.—Section 402(p)(3) is amended by adding at the end the following:

"(C) PROHIBITION ON NUMERIC EFFLUENT LIMITATIONS FOR MUNICIPAL DISCHARGES.—Permits for municipal separate storm sewers shall not include numeric effluent limitations.".

SEC. 403. INTAKE CREDITS.

Section 402 (33 U.S.C. 1342) is amended by adding at the end the following:

"(q) INTAKE CREDITS.—

"(1) IN GENERAL.—Notwithstanding any provision of this Act, in any effluent limitation or other limitation imposed under the permit program established by the Administrator under this section, any State permit program approved under this section (including any program for implementation under section 118(c)(2)), any standards established under section 307(a), or any program for industrial users established under section 307(b), the Administrator, as applicable, shall or the State, as applicable, may provide credits for pollutants present in or caused by intake water such that an owner or operator of a point source is not required to remove, reduce, or treat the amount of any pollutant in an effluent below the amount of such pollutant that is present in or caused by the intake water for such facility—

"(A)(i) if the source of the intake water and the receiving waters into which the effluent is ultimately discharged are the same;

"(ii) if the source of the intake water meets the maximum contaminant levels or treatment techniques for drinking water contaminants established pursuant to the Safe Drinking Water Act for the pollutant of concern; or

"(iii) if, at the time the limitation or standard is established, the level of the pollutant in the intake water is the same as or lower than the amount of the pollutant in the receiving waters, taking into account analytical variability; and

"(B) if, for conventional pollutants, the constituents of the conventional pollutants in the intake water are the same as the constituents of the conventional pollutants in the effluent.

"(2) ALLOWANCE FOR INCIDENTAL AMOUNTS.—In determining whether the condition set forth in paragraph (1)(A)(i) is being met, the Administrator shall or the State may, as appropriate, make allowance for incidental amounts of intake water from sources other than the receiving waters.

"(3) CREDIT FOR NONQUALIFYING POLLUTANTS.—The Administrator shall or a State may provide point sources an appropriate credit for pollutants found in intake water that does not meet the requirement of paragraph (1).

"(4) MONITORING.—Nothing in this section precludes the Administrator or a State from requiring monitoring of intake water, effluent, or receiving waters to assist in the implementation of this section.".

SEC. 404. COMBINED SEWER OVERFLOWS.

Section 402 (33 U.S.C. 1342) is amended by adding at the end the following:

"(r) COMBINED SEWER OVERFLOWS.—

"(1) REQUIREMENT FOR PERMITS.—Each permit issued pursuant to this section for a discharge from a combined storm and sanitary sewer shall conform with the combined sewer overflow control policy signed by the Administrator on April 11, 1994.

"(2) TERM OF PERMIT.—

"(A) COMPLIANCE DEADLINE.—Notwithstanding any compliance schedule under section 301(b), or any permit limitation under section 402(b)(1)(B), the Administrator (or a State with a program approved under subsection (b)) may issue a permit pursuant to this section for a discharge from a combined storm and sanitary sewer, that includes a schedule for compliance with a long-term control plan under the control policy referred to in paragraph (1), for a term not to exceed 15 years.

"(B) EXTENSION.—Notwithstanding the compliance deadline specified in subparagraph (A), the Administrator or a State with a program approved under subsection (b) shall extend, on request of an owner or operator of a combined storm and sanitary sewer and subject to subparagraph (C), the period of compliance beyond the last day of the 15-year period—

"(i) if the Administrator or the State determines that compliance by such last day is not within the economic capability of the owner or operator; and

"(ii) if the owner or operator demonstrates to the satisfaction of the Administrator or the State reasonable further progress towards compliance with a long-term control plan under the control policy referred to in paragraph (1).

"(C) LIMITATIONS ON EXTENSIONS.—

"(i) EXTENSION NOT APPROPRIATE.—Notwithstanding subparagraph (B), the Administrator or the State need not grant an extension of the compliance deadline specified in subparagraph (A) if the Administrator or the State determines that such an extension is not appropriate.

"(ii) NEW YORK-NEW JERSEY.—Prior to granting an extension under subparagraph (B) with respect to a combined sewer overflow discharge originating in the State of New York or New Jersey and affecting the other of such States, the Administrator or the State from which the discharge originates, as the case may be, shall provide written notice of the proposed extension to the other State and shall not grant the extension unless the other State approves the extension or does not disapprove the extension within 90 days of receiving such written notice.

"(3) SAVINGS CLAUSE.—Any consent decree or court order entered by a United States district court, or administrative order issued by the Administrator, before the date of the enactment of this subsection establishing any deadlines, schedules, or timetables, including any interim deadlines, schedules, or timetables, for the evaluation, design, or construction of treatment works for control or elimination of any discharge from a municipal combined storm and sanitary sewer system shall be modified upon motion or request by any party to such consent decree or court order, to extend to December 31, 2009, at a minimum, any such deadlines, schedules, or timetables, including any interim deadlines, schedules, or timetables as is necessary to conform to the policy referred to in paragraph (1) or otherwise achieve the objectives of this subsection. Notwithstanding the preceding sentence, the period of compliance with respect to a discharge referred to in paragraph (2)(C)(ii) may only be extended in accordance with paragraph (2)(C)(ii).".

SEC. 405. ABANDONED MINES.

Section 402 (33 U.S.C. 1342) is further amended by inserting after subsection (o) the following:

"(p) PERMITS FOR REMEDIATING PARTY ON ABANDONED OR INACTIVE MINED LANDS.—

"(1) APPLICABILITY.—Subject to this subsection, including the requirements of paragraph (3), the Administrator, with the concurrence of the concerned State or Indian tribe, may issue a permit to a remediating party under this section for discharges associated with remediation activity at abandoned or inactive mined lands which modifies any otherwise applicable requirement of sections 301(b), 302, and 403, or any subsection of this section (other than this subsection).

"(2) APPLICATION FOR A PERMIT.—A remediating party who desires to conduct remediation activities on abandoned or inactive mined lands from which there is or may be a discharge of pollutants to waters of the United States or from which there could be a significant addition of pollutants from nonpoint sources may submit an application to the Administrator. The application shall consist of a remediation plan and any other information requested by the Administrator to clarify the plan and activities.

"(3) REMEDIATION PLAN.—The remediation plan shall include (as appropriate and applicable) the following:

"(A) Identification of the remediating party, including any persons cooperating with the concerned State or Indian tribe with respect to the plan, and a certification that the applicant is a remediating party under this section.

"(B) Identification of the abandoned or inactive mined lands addressed by the plan.

"(C) Identification of the waters of the United States impacted by the abandoned or inactive mined lands.

"(D) A description of the physical conditions at the abandoned or inactive mined lands that are causing adverse water quality impacts.

"(E) A description of practices, including system design and construction plans and operation and maintenance plans, proposed to reduce, control, mitigate, or eliminate the adverse water quality impacts and a schedule for implementing such practices and, if it

is an existing remediation project, a description of practices proposed to improve the project, if any.

"(F) An analysis demonstrating that the identified practices are expected to result in a water quality improvement for the identified waters.

"(G) A description of monitoring or other assessment to be undertaken to evaluate the success of the practices during and after implementation, including an assessment of baseline conditions.

"(H) A schedule for periodic reporting on progress in implementation of major elements of the plan.

"(I) A budget and identified funding to support the activities described in the plan.

"(J) Remediation goals and objectives.

"(K) Contingency plans.

"(L) A description of the applicant's legal right to enter and conduct activities.

"(M) The signature of the applicant.

"(N) Identification of the pollutant or pollutants to be addressed by the plan.

"(4) PERMITS.—

"(A) CONTENTS.—Permits issued by the Administrator pursuant to this subsection shall—

"(i) provide for compliance with and implementation of a remediation plan which, following issuance of the permit, may be modified by the applicant after providing notification to and opportunity for review by the Administrator;

"(ii) require that any modification of the plan be reflected in a modified permit;

"(iii) require that if, at any time after notice to the remediating party and opportunity for comment by the remediating party, the Administrator determines that the remediating party is not implementing the approved remediation plan in substantial compliance with its terms, the Administrator shall notify the remediating party of the determination together with a list specifying the concerns of the Administrator;

"(iv) provide that, if the identified concerns are not resolved or a compliance plan approved within 180 days of the date of the notification, the Administrator may take action under section 309 of this Act;

"(v) provide that clauses (iii) and (iv) not apply in the case of any action under section 309 to address violations involving gross negligence (including reckless, willful, or wanton misconduct) or intentional misconduct by the remediating party or any other person;

"(vi) not require compliance with any limitation issued under sections 301(b), 302, and 403 or any requirement established by the Administrator under any subsection of this section (other than this subsection); and

"(vii) provide for termination of coverage under the permit without the remediating party being subject to enforcement under sections 309 and 505 of this Act for any remaining discharges—

"(I) after implementation of the remediation plan;

"(II) if a party obtains a permit to mine the site; or

"(III) upon a demonstration by the remediating party that the surface water quality conditions due to remediation activities at the site, taken as a whole, are equal to or superior to the surface water qualities that existed prior to initiation of remediation.

"(B) LIMITATIONS.—The Administrator shall only issue a permit under this section, consistent with the provisions of this subsection, to a remediating party for discharges associated with remediation action at abandoned or inactive mined lands if the remediation plan demonstrates with reasonable certainty that the actions will result in an improvement in water quality.

"(C) PUBLIC PARTICIPATION.—The Administrator may only issue a permit or modify a permit under this section after complying with subsection (b)(3).

"(D) EFFECT OF FAILURE TO COMPLY WITH PERMIT.—Failure to comply with terms of a permit issued pursuant to this subsection shall not be deemed to be a violation of an effluent standard or limitation issued under this Act.

"(E) LIMITATIONS ON STATUTORY CONSTRUCTION.—This subsection shall not be construed—

"(i) to limit or otherwise affect the Administrator's powers under section 504; or

"(ii) to preclude actions pursuant to section 309 or 505 for any violations of sections 301(a), 302, 402, and 403 that may have existed for the abandoned or inactive mined land prior to initiation of remediation covered by a permit issued under this subsection, unless such permit covers remediation activities implemented by the permit holder prior to issuance of the permit.

"(5) DEFINITIONS.—In this subsection the following definitions apply:

"(A) REMEDIATING PARTY.—The term 'remediating party' means—

"(i) the United States (on non-Federal lands), a State or its political subdivisions, or an Indian tribe or officers, employees, or contractors thereof; and

"(ii) any person acting in cooperation with a person described in clause (i), including a government agency that owns abandoned or inactive mined lands for the purpose of conducting remediation of the mined lands or that is engaging in remediation activities incidental to the ownership of the lands.

Such term does not include any person who, before or following issuance of a permit under this section, directly benefited from or participated in any mining operation (including exploration) associated with the abandoned or inactive mined lands.

"(B) ABANDONED OR INACTIVE MINED LANDS.—The term 'abandoned or inactive mined lands' means lands that were formerly mined and are not actively mined or in temporary shutdown at the time of submission of the remediation plan and issuance of a permit under this section.

"(C) MINED LANDS.—The term 'mined lands' means the surface or subsurface of an area where mining operations, including exploration, extraction, processing, and beneficiation, have been conducted. Such term includes private ways and roads appurtenant to such area, land excavations, underground mine portals, adits, and surface expressions associated with underground workings, such as glory holes and subsidence features, mining waste, smelting sites associated with other mined lands, and areas where structures, facilities, equipment, machines, tools, or other material or property which result from or have been used in the mining operation are located.

"(6) REGULATIONS.—The Administrator may issue regulations establishing more specific requirements that the Administrator determines would facilitate implementation of this subsection. Before issuance of such regulations, the Administrator may establish, on a case-by-case basis after notice and opportunity for public comment as provided by subsection (b)(3), more specific requirements that the Administrator determines would facilitate implementation of this subsection in an individual permit issued to the remediating party.".

SEC. 406. BENEFICIAL USE OF BIOSOLIDS.

(a) REFERENCES.—Section 405(a) (33 U.S.C. 1345(a)) is amended by inserting "(also referred to as 'biosolids')" after "sewage sludge" the first place it appears.

(b) APPROVAL OF STATE PROGRAMS.—Section 405(f) (33 U.S.C. 1345(f)) is amended by adding at the end the following:

"(3) APPROVAL OF STATE PROGRAMS.—Notwithstanding any other provision of law, the Administrator shall approve for purposes of this subsection State programs that meet the standards for final use or disposal of sewage sludge established by the Administrator pursuant to subsection (d).".

(c) STUDIES AND PROJECTS.—Section 405(g) (33 U.S.C. 1345(g)) is amended—

(1) in the first sentence of paragraph (1) by inserting "building materials," after "agricultural and horticultural uses,";

(2) in paragraph (1) by adding at the end the following: "Not later than January 1, 1997, and after providing notice and opportunity for public comment, the Administrator shall issue guidance on the beneficial use of sewage sludge."; and

(3) in paragraph (2) by striking "September 30, 1986," and inserting "September 30, 1995,".

TITLE V—GENERAL PROVISIONS

SEC. 501. PUBLICLY OWNED TREATMENT WORKS DEFINED.

Section 502 (33 U.S.C. 1362) is further amended by adding at the end the following:

"(25) The term 'publicly owned treatment works' means a treatment works, as defined in section 212, located at other than an industrial facility, which is designed and constructed principally, as determined by the Administrator, to treat domestic sewage or a mixture of domestic sewage and industrial wastes of a liquid nature. In the case of such a facility that is privately owned, such term includes only those facilities that, with respect to such industrial wastes, are carrying out a pretreatment program meeting all the requirements established under section 307 and paragraphs (8) and (9) of section 402(b) for pretreatment programs (whether or not the treatment works would be required to implement a pretreatment program pursuant to such sections).".

SEC. 502. IMPLEMENTATION OF WATER POLLUTION LAWS WITH RESPECT TO VEGETABLE OIL.

(a) DIFFERENTIATION AMONG FATS, OILS, AND GREASES.—

(1) IN GENERAL.—In issuing or enforcing a regulation, an interpretation, or a guideline relating to a fat, oil, or grease under a Federal law related to water pollution control, the head of a Federal agency shall—

(A) differentiate between and establish separate classes for—

(i)(I) animal fats; and

(II) vegetable oils; and

(ii) other oils, including petroleum oil; and

(B) apply different standards and reporting requirements (including reporting requirements based on quantitative amounts) to different classes of fat and oil as provided in paragraph (2).

(2) CONSIDERATIONS.—In differentiating between the classes of animal fats and vegetable oils referred to in paragraph (1)(A)(i) and the classes of oils described in paragraph (1)(A)(ii), the head of the Federal agency shall consider differences in physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

(b) DEFINITIONS.—In this section, the following definitions apply:

(1) ANIMAL FAT.—The term "animal fat" means each type of animal fat, oil, or grease, including fat, oil, or grease from fish or a

marine mammal and any fat, oil, or grease referred to in section 61(a)(2) of title 13, United States Code.

(2) VEGETABLE OIL.—The term "vegetable oil" means each type of vegetable oil, including vegetable oil from a seed, nut, or kernel and any vegetable oil referred to in section 61(a)(1) of title 13, United States Code.

SEC. 503. NEEDS ESTIMATE.

Section 516(b)(1) (33 U.S.C. 1375(b)(1)) is amended—

(1) in the first sentence by striking "biennially revised" and inserting "quadrennially revised"; and

(2) in the second sentence by striking "February 10 of each odd-numbered year" and inserting "December 31, 1997, and December 31 of every 4th calendar year thereafter".

SEC. 504. FOOD PROCESSING AND FOOD SAFETY.

Title V (33 U.S.C. 1361-1377) is amended by redesignating section 519 as section 521 and by inserting after section 518 the following:

"SEC. 519. FOOD PROCESSING AND FOOD SAFETY.

"In developing any effluent guideline under section 304(b), pretreatment standard under section 307(b), or new source performance standard under section 306 that is applicable to the food processing industry, the Administrator shall consult with and consider the recommendations of the Food and Drug Administration, Department of Health and Human Services, Department of Agriculture, and Department of Commerce. The recommendations of such departments and agencies and a description of the Administrator's response to those recommendations shall be made part of the rulemaking record for the development of such guidelines and standards. The Administrator's response shall include an explanation with respect to food safety, including a discussion of relative risks, of any departure from a recommendation by any such department or agency.".

SEC. 505. AUDIT DISPUTE RESOLUTION.

Title V (33 U.S.C. 1361-1377) is further amended by inserting before section 521, as redesignated by this Act, the following:

"SEC. 520. AUDIT DISPUTE RESOLUTION.

"(a) ESTABLISHMENT OF BOARD.—The Administrator shall establish an independent Board of Audit Appeals (hereinafter in this section referred to as the 'Board') in accordance with the requirements of this section.

"(b) DUTIES.—The Board shall have the authority to review and decide contested audit determinations related to grant and contract awards under this Act. In carrying out such duties, the Board shall consider only those regulations, guidance, policies, facts, and circumstances in effect at the time of the grant or contract award.

"(c) PRIOR ELIGIBILITY DECISIONS.—The Board shall not reverse project cost eligibility determinations that are supported by an decision document of the Environmental Protection Agency, including grant or contract approvals, plans and specifications approval forms, grant or contract payments, change order approval forms, or similar documents approving project cost eligibility, except upon a showing that such decision was arbitrary, capricious, or an abuse of law in effect at the time of such decision.

"(d) MEMBERSHIP.—

"(1) APPOINTMENT.—The Board shall be composed of 7 members to be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

"(2) TERMS.—Each member shall be appointed for a term of 3 years.

"(3) QUALIFICATIONS.—The Administrator shall appoint as members of the Board individuals who are specially qualified to serve on the Board by virtue of their expertise in grant and contracting procedures. The Administrator shall make every effort to ensure that individuals appointed as members of the Board are free from conflicts of interest in carrying out the duties of the Board.

"(e) BASIC PAY AND TRAVEL EXPENSES.—

"(1) RATES OF PAY.—Except as provided in paragraph (2), members shall each be paid at a rate of basic pay, to be determined by the Administrator, for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Board.

"(2) PROHIBITION OF COMPENSATION OF FEDERAL EMPLOYEES.—Members of the Board who are full-time officers or employees of the United States may not receive additional pay, allowances, or benefits by reason of their service on the Board.

"(3) TRAVEL EXPENSES.—Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

"(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Board, the Administrator shall provide to the Board the administrative support services necessary for the Board to carry out its responsibilities under this section.

"(g) DISPUTES ELIGIBLE FOR REVIEW.—The authority of the Board under this section shall extend to any contested audit determination that on the date of the enactment of this section has yet to be formally concluded and accepted by either the grantee or the Administrator.".

TITLE VI—STATE WATER POLLUTION CONTROL REVOLVING FUNDS

SEC. 601. GENERAL AUTHORITY FOR CAPITALIZATION GRANTS.

Section 601(a) (33 U.S.C. 1381(a)) is amended by striking "(1) for construction" and all that follows through the period and inserting "to accomplish the purposes of this Act.".

SEC. 602. CAPITALIZATION GRANT AGREEMENTS.

(a) REQUIREMENTS FOR CONSTRUCTION OF TREATMENT WORKS.—Section 602(b)(6) (33 U.S.C. 1382(b)(6)) is amended—

(1) by striking "before fiscal year 1995"; and

(2) by striking "201(b)" and all that follows through "218" and inserting "211".

(b) COMPLIANCE WITH OTHER FEDERAL LAWS.—Section 602 (33 U.S.C. 1382) is amended by adding at the end the following:

"(c) OTHER FEDERAL LAWS.—

"(1) COMPLIANCE WITH OTHER FEDERAL LAWS.—If a State provides assistance from its water pollution control revolving fund established in accordance with this title and in accordance with a statute, rule, executive order, or program of the State which addresses the intent of any requirement or any Federal executive order or law other than this Act, as determined by the State, the State in providing such assistance shall be treated as having met the Federal requirements.

"(2) LIMITATION ON APPLICABILITY OF OTHER FEDERAL LAWS.—If a State does not meet a requirement of a Federal executive order or law other than this Act under paragraph (1), such Federal law shall only apply to Federal funds deposited in the water pollution control revolving fund established by the State in accordance with this title the first time such funds are used to provide assistance from the revolving fund.".

(c) GUIDANCE FOR SMALL SYSTEMS.—Section 602 (33 U.S.C. 1382) is amended by adding at the end the following new subsection:

"(d) GUIDANCE FOR SMALL SYSTEMS.—

"(1) SIMPLIFIED PROCEDURES.—Not later than 1 year after the date of the enactment of this subsection, the Administrator shall assist the States in establishing simplified procedures for small systems to obtain assistance under this title.

"(2) PUBLICATION OF MANUAL.—Not later than 1 year after the date of the enactment of this subsection, and after providing notice and opportunity for public comment, the Administrator shall publish a manual to assist small systems in obtaining assistance under this title and publish in the Federal Register notice of the availability of the manual.

"(3) SMALL SYSTEM DEFINED.—For purposes of this title, the term 'small system' means a system for which a municipality or intermunicipal, interstate, or State agency seeks assistance under this title and which serves a population of 20,000 or less.".

SEC. 603. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—Section 603(c) (33 U.S.C. 1383(c)) is amended to read as follows:

"(c) ACTIVITIES ELIGIBLE FOR ASSISTANCE.—

"(1) IN GENERAL.—The amounts of funds available to each State water pollution control revolving fund shall be used only for providing financial assistance to activities which have as a principal benefit the improvement or protection of water quality to a municipality, intermunicipal agency, interstate agency, State agency, or other person. Such activities may include the following:

"(A) Construction of a publicly owned treatment works if the recipient of such assistance is a municipality.

"(B) Implementation of lake protection programs and projects under section 314.

"(C) Implementation of a management program under section 319.

"(D) Implementation of a conservation and management plan under section 320.

"(E) Implementation of a watershed management plan under section 321.

"(F) Implementation of a stormwater management program under section 322.

"(G) Acquisition of property rights for the restoration or protection of publicly or privately owned riparian areas.

"(H) Implementation of measures to improve the efficiency of public water use.

"(I) Development and implementation of plans by a public recipient to prevent water pollution.

"(J) Acquisition of lands necessary to meet any mitigation requirements related to construction of a publicly owned treatment works.

"(2) FUND AMOUNTS.—The water pollution control revolving fund of a State shall be established, maintained, and credited with repayments, and the fund balance shall be available in perpetuity for providing financial assistance described in paragraph (1). Fees charged by a State to recipients of such assistance may be deposited in the fund for the sole purpose of financing the cost of administration of this title.".

(b) EXTENDED REPAYMENT PERIOD FOR DISADVANTAGED COMMUNITIES.—Section 603(d)(1) (33 U.S.C. 1383(d)(1)) is amended—

(1) in subparagraph (A) by inserting after "20 years" the following: "or, in the case of a disadvantaged community, the lesser of 40 years or the expected life of the project to be financed with the proceeds of the loan"; and

(2) in subparagraph (B) by striking "not later than 20 years after project completion" and inserting "upon the expiration of the term of the loan".

(c) LOAN GUARANTEES FOR INNOVATIVE TECHNOLOGY.—Section 603(d)(5) (33 U.S.C. 1383(d)(5)) is amended to read as follows:

"(5) to provide loan guarantees for—

"(A) similar revolving funds established by municipalities or intermunicipal agencies; and

"(B) developing and implementing innovative technologies.".

(d) ADMINISTRATIVE EXPENSES.—Section 603(d)(7) (33 U.S.C. 1383(d)(7)) is amended by inserting before the period at the end the following: "or $400,000 per year, whichever is greater, plus the amount of any fees collected by the State for such purpose under subsection (c)(2)".

(e) TECHNICAL AND PLANNING ASSISTANCE FOR SMALL SYSTEMS.—Section 603(d) (33 U.S.C. 1383(d)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(8) to provide to small systems technical and planning assistance and assistance in financial management, user fee analysis, budgeting, capital improvement planning, facility operation and maintenance, repair schedules, and other activities to improve wastewater treatment plant operations; except that such amounts shall not exceed 2 percent of all grant awards to such fund under this title.".

(f) CONSISTENCY WITH PLANNING REQUIREMENTS.—Section 603(f) (33 U.S.C. 1383(f)) is amended by striking "and 320" and inserting "320, 321, and 322".

(g) LIMITATIONS ON CONSTRUCTION ASSISTANCE.—Section 603(g) (33 U.S.C. 1383(g)) is amended to read as follows:

"(g) LIMITATIONS ON CONSTRUCTION ASSISTANCE.—The State may provide financial assistance from its water pollution control revolving fund with respect to a project for construction of a treatment works only if—

"(1) such project is on the State's priority list under section 216 of this Act; and

"(2) the recipient of such assistance is a municipality in any case in which the treatment works is privately owned.".

(h) INTEREST RATES.—Section 603 is further amended by adding at the end the following:

"(i) INTEREST RATES.—In any case in which a State makes a loan pursuant to subsection (d)(1) to a disadvantaged community, the State may charge a negative interest rate of not to exceed 2 percent to reduce the unpaid principal of the loan. The aggregate amount of all such negative interest rate loans the State makes in a fiscal year shall not exceed 20 percent of the aggregate amount of all loans made by the State from its revolving loan fund in such fiscal year.

"(j) DISADVANTAGED COMMUNITY DEFINED.—As used in this section, the term 'disadvantaged community' means the service area of a publicly owned treatment works with respect to which the average annual residential sewage treatment charges for a user of the treatment works meet affordability criteria established by the State in which the treatment works is located (after providing for public review and comment) in accordance with guidelines to be established by the Administrator, in cooperation with the States.".

(i) SALE OF TREATMENT WORKS.—Section 603 is further amended by adding at the end the following:

"(k) SALE OF TREATMENT WORKS.—

"(1) IN GENERAL.—Notwithstanding any other provisions of this Act, any State, municipality, intermunicipality, or interstate agency may transfer by sale to a qualified private sector entity all or part of a treatment works that is owned by such agency and for which it received Federal financial assistance under this Act if the transfer price will be distributed, as amounts are received, in the following order:

"(A) First reimbursement of the agency of the unadjusted dollar amount of the costs of construction of the treatment works or part thereof plus any transaction and fix-up costs incurred by the agency with respect to the transfer less the amount of such Federal financial assistance provided with respect to such costs.

"(B) If proceeds from the transfer remain after such reimbursement, repayment of the Federal Government of the amount of such Federal financial assistance less the applicable share of accumulated depreciation on such treatment works (calculated using Internal Revenue Service accelerated depreciation schedule applicable to treatment works).

"(C) If any proceeds of such transfer remain after such reimbursement and repayment, retention of the remaining proceeds by such agency.

"(2) RELEASE OF CONDITION.—Any requirement imposed by regulation or policy for a showing that the treatment works are no longer needed to serve their original purpose shall not apply.

"(3) SELECTION OF BUYER.—A State, municipality, intermunicipality, or interstate agency exercising the authority granted by this subsection shall select a qualified private sector entity on the basis of total net cost and other appropriate criteria and shall utilize such competitive bidding, direct negotiation, or other criteria and procedures as may be required by State law.

"(l) PRIVATE OWNERSHIP OF TREATMENT WORKS.—

"(1) REGULATORY REVIEW.—The Administrator shall review the law and any regulations, policies, and procedures of the Environmental Protection Agency affecting the construction, improvement, replacement, operation, maintenance, and transfer of ownership of current and future treatment works owned by a State, municipality, intermunicipality, or interstate agency. If permitted by law, the Administrator shall modify such regulations, policies, and procedures to eliminate any obstacles to the construction, improvement, replacement, operation, and maintenance of such treatment works by qualified private sector entities.

"(2) REPORT.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall submit to Congress a report identifying any provisions of law that must be changed in order to eliminate any obstacles referred to in paragraph (1).

"(3) DEFINITION.—For purposes of this section, the term 'qualified private sector entity' means any nongovernmental individual, group, association, business, partnership, organization, or privately or publicly held corporation that—

"(A) has sufficient experience and expertise to discharge successfully the responsibilities associated with construction, operation, and maintenance of a treatment works and to satisfy any guarantees that are agreed to in connection with a transfer of treatment works under subsection (k);

"(B) has the ability to assure protection against insolvency and interruption of services through contractual and financial guarantees; and

"(C) with respect to subsection (k), to the extent consistent with the North American Free Trade Agreement and the General Agreement on Tariffs and Trade—

"(i) is majority-owned and controlled by citizens of the United States; and

"(ii) does not receive subsidies from a foreign government.".

SEC. 604. ALLOTMENT OF FUNDS.

(a) IN GENERAL.—Section 604(a) (33 U.S.C. 1384(a)) is amended to read as follows:

"(a) FORMULA FOR FISCAL YEARS 1996–2000.—Sums authorized to be appropriated pursuant to section 607 for each of fiscal years 1996, 1997, 1998, 1999, and 2000 shall be allotted for such year by the Administrator not later than the 10th day which begins after the date of the enactment of the Clean Water Amendments of 1995. Sums authorized for each such fiscal year shall be allotted in accordance with the following table:

"States:	*Percentage of sums authorized:*
Alabama	1.0110
Alaska	0.5411
Arizona	0.7464
Arkansas	0.5914
California	7.9031
Colorado	0.7232
Connecticut	1.3537
Delaware	0.4438
District of Columbia	0.4438
Florida	3.4462
Georgia	1.8683
Hawaii	0.7002
Idaho	0.4438
Illinois	4.9976
Indiana	2.6631
Iowa	1.2236
Kansas	0.8690
Kentucky	1.3570
Louisiana	1.0060
Maine	0.6999
Maryland	2.1867
Massachusetts	3.7518
Michigan	3.8875
Minnesota	1.6618
Mississippi	0.8146
Missouri	2.5063
Montana	0.4438
Nebraska	0.4624
Nevada	0.4438
New Hampshire	0.9035
New Jersey	4.5156
New Mexico	0.4438
New York	12.1969
North Carolina	1.9943
North Dakota	0.4438
Ohio	5.0898
Oklahoma	0.7304
Oregon	1.2399
Pennsylvania	4.2145
Rhode Island	0.6071
South Carolina	0.9262
South Dakota	0.4438
Tennessee	1.4668
Texas	4.6458
Utah	0.4764
Vermont	0.4438
Virginia	2.2615
Washington	1.9217
West Virginia	1.4249
Wisconsin	2.4442
Wyoming	0.4438
Puerto Rico	1.1792
Northern Marianas	0.0377
American Samoa	0.0812
Guam	0.0587
Pacific Islands Trust Territory	0.1158
Virgin Islands	0.0576.".

(b) CONFORMING AMENDMENT.—Section 604(c)(2) is amended by striking "title II of this Act" and inserting "this title".

SEC. 605. AUTHORIZATION OF APPROPRIATIONS.

Section 607 (33 U.S.C. 1387(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting a semicolon; and

(3) by adding at the end the following:

"(6) such sums as may be necessary for fiscal year 1995;

"(7) $2,500,000,000 for fiscal year 1996;

"(8) $2,500,000,000 for fiscal year 1997;

"(9) $2,500,000,000 for fiscal year 1998;

"(10) $2,500,000,000 for fiscal year 1999; and

"(11) $2,500,000,000 for fiscal year 2000.".

SEC. 606. STATE NONPOINT SOURCE WATER POLLUTION CONTROL REVOLVING FUNDS.

Title VI (33 U.S.C. 1381–1387) is amended—

(1) in section 607 by inserting after "title" the following: "(other than section 608)"; and

(2) by adding at the end the following:

"SEC. 608. STATE NONPOINT SOURCE WATER POLLUTION CONTROL REVOLVING FUNDS.

"(a) GENERAL AUTHORITY.—The Administrator shall make capitalization grants to each State for the purpose of establishing a nonpoint source water pollution control revolving fund for providing assistance—

"(1) to persons for carrying out management practices and measures under the State management program approved under section 319; and

"(2) to agricultural producers for the development and implementation of the water quality components of a whole farm or ranch resource management plan and for implementation of management practices and measures under such a plan.

A State nonpoint source water pollution control revolving fund shall be separate from any other State water pollution control revolving fund; except that the chief executive officer of the State may transfer funds from one fund to the other fund.

"(b) APPLICABILITY OF OTHER REQUIREMENTS OF THIS TITLE.—Except to the extent the Administrator, in consultation with the chief executive officers of the States, determines that a provision of this title is not consistent with a provision of this section, the provisions of sections 601 through 606 of this title shall apply to grants made under this section in the same manner and to the same extent as they apply to grants made under section 601 of this title. Paragraph (5) of section 602(b) shall apply to all funds in a State revolving fund established under this section as a result of capitalization grants made under this section; except that such funds shall first be used to assure reasonable progress toward attainment of the goals of section 319, as determined by the Governor of the State. Paragraph (7) of section 603(d) shall apply to a State revolving fund established under this section, except that the 4-percent limitation contained in such section shall not apply to such revolving fund.

"(c) APPORTIONMENT OF FUNDS.—Funds made available to carry out this section for any fiscal year shall be allotted among the States by the Administrator in the same manner as funds are allotted among the States under section 319 in such fiscal year.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $500,000,000 per fiscal year for each of fiscal years 1996 through 2000.".

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. TECHNICAL AMENDMENTS.

(a) SECTION 118.—Section 118(c)(1)(A) (33 U.S.C. 1268(c)(1)(A)) is amended by striking the last comma.

(b) SECTION 120.—Section 120(d) (33 U.S.C. 1270(d)) is amended by striking "(1)".

(c) SECTION 204.—Section 204(a)(3) (33 U.S.C. 1284(a)(3)) is amended by striking the final period and inserting a semicolon.

(d) SECTION 205.—Section 205 (33 U.S.C. 1285) is amended—

(1) in subsection (c)(2) by striking "and 1985" and inserting "1985, and 1986";

(2) in subsection (c)(2) by striking "through 1985" and inserting "through 1986";

(3) in subsection (g)(1) by striking the period following "4 per centum"; and

(4) in subsection (m)(1)(B) by striking "this" the last place it appears and inserting "such".

(e) SECTION 208.—Section 208 (33 U.S.C. 1288) is amended—

(1) in subsection (h)(1) by striking "designed" and inserting "designated"; and

(2) in subsection (j)(1) by striking "September 31, 1988" and inserting "September 30, 1988".

(f) SECTION 301.—Section 301(j)(1)(A) (33 U.S.C. 1311(j)(1)(A)) is amended by striking "that" the first place it appears and inserting "than".

(g) SECTION 309.—Section 309(d) (33 U.S.C. 1319(d)) is amended by striking the second comma following "Act by a State".

(h) SECTION 311.—Section 311 (33 U.S.C. 1321) is amended—

(1) in subsection (b) by moving paragraph (12) (including subparagraphs (A), (B) and (C)) 2 ems to the right; and

(2) in subsection (h)(2) by striking "The" and inserting "the".

(i) SECTION 505.—Section 505(f) (33 U.S.C. 1365(f)) is amended by striking the last comma.

(j) SECTION 516.—Section 516 (33 U.S.C. 1375) is amended by redesignating subsection (g) as subsection (f).

(k) SECTION 518.—Section 518(f) (33 U.S.C. 1377(f)) is amended by striking "(d)" and inserting "(e)".

SEC. 702. JOHN A. BLATNIK NATIONAL FRESH WATER QUALITY RESEARCH LABORATORY.

(a) DESIGNATION.—The laboratory and research facility established pursuant to section 104(e) of the Federal Water Pollution Control Act (33 U.S.C. 1254(e)) that is located in Duluth, Minnesota, shall be known and designated as the "John A. Blatnik National Fresh Water Quality Research Laboratory".

(b) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the laboratory and research facility referred to in subsection (a) shall be deemed to be a reference to the "John A. Blatnik National Fresh Water Quality Research Laboratory".

SEC. 703. WASTEWATER SERVICE FOR COLONIAS.

(a) GRANT ASSISTANCE.—The Administrator may make grants to States along the United States-Mexico border to provide assistance for planning, design, and construction of treatment works to provide wastewater service to the communities along such border commonly known as "colonias".

(b) FEDERAL SHARE.—The Federal share of the cost of a project carried out using funds made available under subsection (a) shall be 50 percent. The non-Federal share of such cost shall be provided by the State receiving the grant.

(c) TREATMENT WORKS DEFINED.—For purposes of this section, the term "treatment works" has the meaning such term has under section 212 of the Federal Water Pollution Control Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under subsection (a) $50,000,000 for fiscal year 1996. Such sums shall remain available until expended.

SEC. 704. SAVINGS IN MUNICIPAL DRINKING WATER COSTS.

(a) STUDY.—The Administrator of the Environmental Protection Agency, in consultation with the Director of the Office of Management and Budget, shall review, analyze, and compile information on the annual savings that municipalities realize in the construction, operation, and maintenance of drinking water facilities as a result of actions taken under the Federal Water Pollution Control Act.

(b) CONTENTS.—The study conducted under subsection (a), at a minimum, shall contain an examination of the following elements:

(1) Savings to municipalities in the construction of drinking water filtration facilities resulting from actions taken under the Federal Water Pollution Control Act.

(2) Savings to municipalities in the operation and maintenance of drinking water facilities resulting from actions taken under such Act.

(3) Savings to municipalities in health expenditures resulting from actions taken under such Act.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Administrator shall transmit to Congress a report containing the results of the study conducted under subsection (a).

TITLE VIII—WETLANDS CONSERVATION AND MANAGEMENT

SEC. 801. SHORT TITLE.

This title may be cited as the "Wetlands and Watershed Management Act of 1995".

SEC. 802. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds and declares the following:

(1) Wetlands perform a number of valuable functions needed to restore and maintain the chemical, physical, and biological integrity of the Nation's waters, including—

(A) reducing pollutants (including nutrients, sediment, and toxics) from nonpoint and point sources;

(B) storing, conveying, and purifying flood and storm waters;

(C) reducing both bank erosion and wave and storm damage to adjacent lands and trapping sediment from upland sources;

(D) providing habitat and food sources for a broad range of commercial and recreational fish, shellfish, and migratory wildlife species (including waterfowl and endangered species); and

(E) providing a broad range of recreational values for canoeing, boating, birding, and nature study and observation.

(2) Original wetlands in the contiguous United States have been reduced by an estimated 50 percent and continue to disappear at a rate of 200,000 to 300,000 acres a year. Many of these original wetlands have also been altered or partially degraded, reducing their ecological value.

(3) Wetlands are highly sensitive to changes in water regimes and are, therefore, susceptible to degradation by fills, drainage, grading, water extractions, and other activities within their watersheds which affect the quantity, quality, and flow of surface and ground waters. Protection and management of wetlands, therefore, should be integrated with management of water systems on a watershed basis. A watershed protection and management perspective is also needed to understand and reverse the gradual, continued destruction of wetlands that occurs due to cumulative impacts.

(4) Wetlands constitute an estimated 5 percent of the Nation's surface area. Because much of this land is in private ownership wetlands protection and management strategies must take into consideration private

property rights and the need for economic development and growth. This can be best accomplished in the context of a cooperative and coordinated Federal, State, and local strategy for data gathering, planning, management, and restoration with an emphasis on advance planning of wetlands in watershed contexts.

(b) PURPOSES.—The purposes of this Act are—

(1) to help create a coordinated national wetland management effort with efficient use of scarce Federal, State, and local financial and manpower resources to protect wetland functions and values and reduce natural hazard losses;

(2) to help reverse the trend of wetland loss in a fair, efficient, and cost-effective manner;

(3) to reduce inconsistencies and duplication in Federal, State, and local wetland management efforts and encourage integrated permitting at the Federal, State, and local levels;

(4) to increase technical assistance, cooperative training, and educational opportunities for States, local governments, and private landowners;

(5) to help integrate wetland protection and management with other water resource management programs on a watershed basis such as flood control, storm water management, allocation of water supply, protection of fish and wildlife, and point and nonpoint source pollution control;

(6) to increase regionalization of wetland delineation and management policies within a framework of national policies through advance planning of wetland areas, programmatic general permits and other approaches and the tailoring of policies to ecosystem and land use needs to reflect significant watershed variance in wetland resources;

(7) to address the cumulative loss of wetland resources;

(8) to increase the certainty and predictability of planning and regulatory policies for private landowners;

(9) to help achieve no overall net loss and net gain of the remaining wetland base of the United States through watershed-based restoration strategies involving all levels of government;

(10) to restore and create wetlands in order to increase the quality and quantity of the wetland resources and by so doing to restore and maintain the quality and quantity of the waters of the United States; and

(11) to provide mechanisms for joint State, Federal, and local development and testing of approaches to better protect wetland resources such as mitigation banking.

SEC. 803. STATE, LOCAL, AND LANDOWNER TECHNICAL ASSISTANCE AND COOPERATIVE TRAINING.

(a) STATE AND LOCAL TECHNICAL ASSISTANCE.—Upon request, the Administrator or the Secretary of the Army, as appropriate, shall provide technical assistance to State and local governments in the development and implementation of State and local government permitting programs under sections 404(e) and 404(h) of the Federal Water Pollution Control Act, State wetland conservation plans under section 805, and regional or local wetland management plans under section 805.

(b) COOPERATIVE TRAINING.—The Administrator and the Secretary, in cooperation with the Coordinating Committee established pursuant to section 804, shall conduct training courses for States and local governments involving wetland delineation, utilization of wetlands in nonpoint pollution control, wetland and stream restoration, wetland planning, wetland evaluation, mitigation banking, and other subjects deemed appropriate by the Administrator or Secretary.

(c) PRIVATE LANDOWNER TECHNICAL ASSISTANCE.—The Administrator and Secretary shall, in cooperation with the Coordination Committee, and appropriate Federal agencies develop and provide to private landowners guidebooks, pamphlets, or other materials and technical assistance to help them in identifying and evaluating wetlands, developing integrated wetland management plans for their lands consistent with the goals of this Act and the Federal Water Pollution Control Act, and restoring wetlands.

SEC. 804. FEDERAL, STATE, AND LOCAL GOVERNMENT COORDINATING COMMITTEE.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act, the Administrator shall establish a Federal, State, and Local Government Wetlands Coordinating Committee (hereinafter in this section referred to as the "Committee").

(b) FUNCTIONS.—The Committee shall—

(1) help coordinate Federal, State, and local wetland planning, regulatory, and restoration programs on an ongoing basis to reduce duplication, resolve potential conflicts, and efficiently allocate manpower and resources at all levels of government;

(2) provide comments to the Secretary of the Army or Administrator in adopting regulatory, policy, program, or technical guidance affecting wetland systems;

(3) help develop and field test, national policies prior to implementation such as wetland, delineation, classification of wetlands, methods for sequencing wetland mitigation responses, the utilization of mitigation banks;

(4) help develop and carry out joint technical assistance and cooperative training programs as provided in section 803;

(5) help develop criteria and implementation strategies for facilitating State conservation plans and strategies, local and regional wetland planning, wetland restoration and creation, and State and local permitting programs pursuant to section 404(e) or 404(g) of the Federal Water Pollution Control Act; and

(6) help develop a national strategy for the restoration of wetland ecosystems pursuant to section 6 of this Act.

(c) MEMBERSHIP.—The Committee shall be composed of 18 members as follows:

(1) The Administrator or the designee of the Administrator.

(2) The Secretary or the designee of the Secretary.

(3) The Director of the United States Fish and Wildlife Service or the designee of the Director.

(4) The Chief of the Natural Resources Conservation Service or the designee of the Chief.

(5) The Undersecretary for Oceans and Atmosphere or the designee of the Under Secretary.

(6) One individual appointed by the Administrator who will represent the National Governor's Association.

(7) One individual appointed by the Administrator who will represent the National Association of Counties.

(8) One individual appointed by the Administrator who will represent the National League of Cities.

(9) One State wetland expert from each of the 10 regions of the Environmental Protection Agency. Each member to be appointed under this paragraph shall be jointly appointed by the Governors of the States within the Environmental Protection Agency's region. If the Governors from a region cannot agree on such a representative, they will each submit a nomination to the Administrator and the Administrator will select a representative from such region.

(d) TERMS.—Each member appointed pursuant to paragraph (6), (7), (8), or (9) of subsection (c) shall be appointed for a term of 2 years.

(e) VACANCIES.—A vacancy in the Committee shall be filled, on or before the 30th day after the vacancy occurs, in the manner in which the original appointment was made.

(f) PAY.—Members shall serve without pay, but may receive travel expenses (including per diem in lieu of subsistence) in accordance with sections 5702 and 5703 of title 5, United States Code.

(g) COCHAIRPERSONS.—The Administrator and one member appointed pursuant to paragraph (6), (7), (8), or (9) of subsection (c) (selected by such members) shall serve as cochairpersons of the Committee.

(h) QUORUM.—Two-thirds of the members of the Committee shall constitute a quorum but a lesser number may hold meetings.

(i) MEETINGS.—The Committee shall hold its first meeting not later than 120 days after the date of the enactment of this Act. The Committee shall meet at least twice each year thereafter. Meetings will be opened to the public.

SEC. 805. STATE AND LOCAL WETLAND CONSERVATION PLANS AND STRATEGIES; GRANTS TO FACILITATE THE IMPLEMENTATION OF SECTION 404.

(a) STATE WETLAND CONSERVATION PLANS AND STRATEGIES.—Subject to the requirements of this section, the Administrator shall make grants to States and tribes to assist in the development and implementation of wetland conservation plans and strategies. More specific goals for such conservation plans and strategies may include:

(1) Inventorying State wetland resources, identifying individual and cumulative losses, identifying State and local programs applying to wetland resources, determining gaps in such programs, and making recommendations for filling those gaps.

(2) Developing and coordinating existing State, local, and regional programs for wetland management and protection on a watershed basis.

(3) Increasing the consistency of Federal, State, and local wetland definitions, delineation, and permitting approaches.

(4) Mapping and characterizing wetland resources on a watershed basis.

(5) Identifying sites with wetland restoration or creation potential.

(6) Establishing management strategies for reducing causes of wetland degradation and restoring wetlands on a watershed basis.

(7) Assisting regional and local governments prepare watershed plans for areas with a high percentage of lands classified as wetlands or otherwise in need of special management.

(8) Establishing and implementing State or local permitting programs under section 404(e) or 404(h) of the Federal Water Pollution Control Act.

(b) REGIONAL AND LOCAL WETLAND PLANNING, REGULATION, AND MANAGEMENT PROGRAMS.—Subject to the requirements of this section, the Administrator shall make grants to States which will, in turn, use this funding to make grants to regional and local governments to assist them in adopting and implementing wetland and watershed management programs consistent with goals stated in section 101 of the Federal Water

Pollution Control Act and section 802 of this Act. Such plans shall be integrated with (where appropriate) or coordinated with planning efforts pursuant to section 319 of the Federal Water Pollution Control Act. Such programs shall, at a minimum, involve the inventory of wetland resources and the adoption of plans and policies to help achieve the goal of no net loss of wetland resources on a watershed basis. Other goals may include, but are not limited to:

(1) Integration of wetland planning and management with broader water resource and land use planning and management, including flood control, water supply, storm water management, and control of point and nonpoint source pollution.

(2) Adoption of measures to increase consistency in Federal, State, and local wetland definitions, delineation, and permitting approaches.

(3) Establishment of management strategies for restoring wetlands on a watershed basis.

(c) GRANTS TO FACILITATE THE IMPLEMENTATION OF SECTION 404.—Subject to the requirements of this section, the Administrator may make grants to States which assist the Federal Government in the implementation of the section 404 Federal Water Pollution Control program through State assumption of permitting pursuant to sections 404(g) and 404(h) of such Act through State permitting through a State programmatic general permit pursuant to section 404(e) of such Act or through monitoring and enforcement activities. In order to be eligible to receive a grant under this section a State shall provide assurances satisfactory to the Administrator that amounts received by the State in grants under this section will be used to issue regulatory permits or to enforce regulations consistent with the overall goals of section 802 and the standards and procedures of section 404(g) or 404(e) of this Act.

(d) MAXIMUM AMOUNT.—No State may receive more than $500,000 in total grants under subsections (a), (b), and (c) in any fiscal year and more than $300,000 in grants for subsection (a), (b), or (c), individually.

(e) FEDERAL SHARE.—The Federal share of the cost of activities carried out using amounts made available in grants under this section shall not exceed 75 percent.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 per fiscal year for each of fiscal years 1996, 1997, 1998, 1999, and 2000.

SEC. 806. NATIONAL COOPERATIVE WETLAND ECOSYSTEM RESTORATION STRATEGY.

(a) DEVELOPMENT.—Not later than 180 days after the date of the enactment of this Act, the Administrator, in cooperation with other Federal agencies, State, and local governments, and representatives of the private sector, shall initiate the development of a National Cooperative Wetland Ecosystem Restoration Strategy.

(b) GOALS.—The goal of the National Cooperative Wetland Ecosystem Restoration Strategy shall be to restore damaged and degraded wetland and riparian ecosystems consistent with the goals of the Water Pollution Control Amendments and the goals of section 802, and the recommendations of the National Academy of Sciences with regard to the restoration of aquatic ecosystems.

(c) FUNCTIONS.—The National Cooperative Wetland Ecosystem Restoration Strategy shall—

(1) be designed to help coordinate and promote restoration efforts by Federal, State, regional, and local governments and the private sector, including efforts authorized by the Coastal Wetlands Planning, Protection, and Restoration Act, the North American Waterfowl Management Plan, the Wetlands Reserve Program, and the wetland restoration efforts on Federal, State, local, and private lands;

(2) involve the Federal, State, and local Wetlands Coordination Committee established pursuant to section 804;

(3) inventory and evaluate existing restoration efforts and make suggestions for the establishment of new watershed specific efforts consistent with existing Federal programs and State, regional, and local wetland protection and management efforts;

(4) evaluate the role presently being played by wetland restoration in both regulatory and nonregulatory contexts and the relative success of wetland restoration in these contexts;

(5) develop criteria for identifying wetland restoration sites on a watershed basis, procedures for wetlands restoration, and ecological criteria for wetlands restoration; and

(6) identify regulatory obstacles to wetlands ecosystem restoration and recommend methods to reduce such obstacles.

SEC. 807. PERMITS FOR DISCHARGE OF DREDGED OR FILL MATERIAL.

(a) PERMIT MONITORING AND TRACKING.—Section 404(a) (33 U.S.C. 1344) is amended by adding at the end thereof the following: "The Secretary shall, in cooperation with the Administrator, establish a permit monitoring and tracking programs on a watershed basis to monitor the cumulative impact of individual and general permits issued under this section. This program shall determine the impact of permitted activities in relationship to the no net loss goal. Results shall be reported biannually to Congress.".

(b) ISSUANCE OF GENERAL PERMITS.—Paragraph (1) of section 404(e) is amended by inserting "local," before "State, regional, or nationwide basis" in the first sentence.

(c) REVOCATION OR MODIFICATION OF GENERAL PERMITS.—Paragraph (2) of section 404(e) is amended by striking the period at the end and inserting "or a State or local government has failed to adequately monitor and control the individual and cumulative adverse effects of activities authorized by State or local programmatic general permits.".

(d) PROGRAMMATIC GENERAL PERMITS.—Section 404(e) is amended by adding at the end thereof the following new paragraph:

"(3) PROGRAMMATIC GENERAL PERMITS.—Consistent with the following requirements, the Secretary may, after notice and opportunity for public comment, issue State or local programmatic general permits for the purpose of avoiding unnecessary duplication of regulations by State, regional, and local regulatory programs:

"(A) The Secretary may issue a programmatic general permit based on a State, regional, or local government regulatory program if that general permit includes adequate safeguards to ensure that the State, regional, or local program will have no more than minimal cumulative impacts on the environment and will provide at least the same degree of protection for the environment, including all waters of the United States, and for Federal interests, as is provided by this section and by the Federal permitting program pursuant to section 404(a). Such safeguards shall include provisions whereby the Corps District Engineer and the Regional Administrators or Directors of the Environmental Protection Agency, the United States Fish and Wildlife Service, and the National Marine Fisheries Service (where appropriate), shall have an opportunity to review permit applications submitted to the State, regional, or local regulatory agency which would have more than minimal individual or cumulative adverse impacts on the environment, attempt to resolve any environmental concern or protect any Federal interest at issue, and, if such concern is not adequately addressed by the State, local, or regional agency, require the processing of an individual Federal permit under this section for the specific proposed activity. The Secretary shall ensure that the District Engineer will utilize this authority to protect all Federal interests including, but not limited to, national security, navigation, flood control, Federal endangered or threatened species, Federal interests under the Wild and Scenic Rivers Act, special aquatic sites of national importance, and other interests of overriding national importance. Any programmatic general permit issued under this subsection shall be consistent with the guidelines promulgated to implement subsection (b)(1).

"(B) In addition to the requirements of subparagraph (A), the Secretary shall not promulgate any local or regional programmatic general permit based on a local or regional government's regulatory program unless the responsible unit of government has also adopted a wetland and watershed management plan and is administering regulations to implement this plan. The watershed management plan shall include—

"(i) the designation of a local or regional regulatory agency which shall be responsible for issuing permits under the plan and for making reports every 2 years on implementation of the plan and on the losses and gains in functions and acres of wetland within the watershed plan area;

"(ii) mapping of—

"(I) the boundary of the plan area;

"(II) all wetlands and waters within the plan area as well as other areas proposed for protection under the plan; and

"(III) proposed wetland restoration or creation sites with a description of their intended functions upon completion and the time required for completion;

"(iii) a description of the regulatory policies and standards applicable to all wetlands and waters within the plan areas and all activities which may affect these wetlands and waters that will assure, at a minimum, no net loss of the functions and acres of wetlands within the plan area; and

"(iv) demonstration that the regulatory agency has the legal authority and scientific monitoring capability to carry out the proposed plan including the issuance, monitoring, and enforcement of permits in compliance with the plan.".

(e) GRANDFATHER OF EXISTING GENERAL PERMITS.—Section 404(e) is further amended by adding at the end the following:

"(4) GRANDFATHER OF EXISTING GENERAL PERMITS.—General permits in effect on day before the date of the enactment of the Wetlands and Watershed Management Act of 1995 shall remain in effect until otherwise modified by the Secretary.".

(f) DISCHARGES NOT REQUIRING A PERMIT.—Section 404(f) (33 U.S.C. 1344(f)) is amended by striking the subsection designation and paragraph (1) and inserting the following:

"(f) EXEMPTIONS.—

"(1) ACTIVITIES NOT REQUIRING PERMIT.—

"(A) IN GENERAL.—Activities are exempt from the requirements of this section and are not prohibited by or otherwise subject to

regulation under this section or section 301 or 402 of this Act (except effluent standards or prohibitions under section 307 of this Act) if such activities—

"(i) result from normal farming, silviculture, aquaculture, and ranching activities and practices, including but not limited to plowing, seeding, cultivating, haying, grazing, normal maintenance activities, minor drainage, burning of vegetation in connection with such activities, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

"(ii) are for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, flood control channels or other engineered flood control facilities, water control structures, water supply reservoirs (where such maintenance involves periodic water level drawdowns) which provide water predominantly to public drinking water systems, groins, riprap, breakwaters, utility distribution and transmission lines, causeways, and bridge abutments or approaches, and transportation structures;

"(iii) are for the purpose of construction or maintenance of farm, stock or aquaculture ponds, wastewater retention facilities (including dikes and berms) that are used by concentrated animal feeding operations, or irrigation canals and ditches or the maintenance or reconstruction of drainage ditches and tile lines;

"(iv) are for the purpose of construction of temporary sedimentation basins on a construction site, or the construction of any upland dredged material disposal area, which does not include placement of fill material into the navigable waters;

"(v) are for the purpose of construction or maintenance of farm roads or forest roads, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the waters are not impaired, that the reach of the waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

"(vi) are undertaken on farmed wetlands, except that any change in use of such land for the purpose of undertaking activities that are not exempt from regulation under this subsection shall be subject to the requirements of this section to the extent that such farmed wetlands are 'wetlands' under this section;

"(vii) are undertaken in incidentally created wetlands, unless such incidentally created wetlands have exhibited wetlands functions and values for more than 5 years in which case activities undertaken in such wetlands shall be subject to the requirements of this section; and

"(viii) are for the purpose of preserving and enhancing aviation safety or are undertaken in order to prevent an airport hazard.".

(g) AREAS NOT CONSIDERED TO BE NAVIGABLE WATERS.—Section 404(f) is further amended by adding the following:

"(3) AREAS NOT CONSIDERED TO BE NAVIGABLE WATERS.—

"(A) IN GENERAL.—For purposes of this section, the following shall not be considered navigable waters:

"(i) Irrigation ditches excavated in uplands.

"(ii) Artificially irrigated areas which would revert to uplands if the irrigation ceased.

"(iii) Artificial lakes or ponds created by excavating or diking uplands to collect and retain water, and which are used exclusively for stock watering, irrigation, or rice growing.

"(iv) Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating or diking uplands to retain water for primarily aesthetic reasons.

"(v) Temporary, water filled depressions created in uplands incidental to construction activity.

"(vi) Pits excavated in uplands for the purpose of obtaining fill, sand, gravel, aggregates, or minerals, unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States.

"(vii) Artificial stormwater detention areas and artificial sewage treatment areas which are not modified natural waters.

"(B) DEMONSTRATION REQUIRED.—Subparagraph (A) shall not apply to a particular water body unless the person desiring to discharge dredged or fill material in that water body is able to demonstrate that the water body qualifies under subparagraph (A) for exemption from regulation under this section.".

SEC. 808. TECHNICAL ASSISTANCE TO PRIVATE LANDOWNERS, CODIFICATION OF REGULATIONS AND POLICIES.

Section 404 (33 U.S.C. 1344) is amended by adding at the end the following:

"(u)(1) The Secretary and the Administrator shall in cooperation with the United States Fish and Wildlife Service, Natural Resources Conservation Service, and National Marine Fisheries Service provide technical assistance to private landowners in delineation of wetlands and the planning and management of their wetlands. This assistance shall include—

"(A) the delineation of wetland boundaries within 90 days (providing on the ground conditions allow) of a request for such delineation for a project with a proposed individual permit application under this section and a total assessed value of less than $15,000; and

"(B) the provision of technical assistance to owners of wetlands in the preparation of wetland management plans for their lands to protect and restore wetlands and meet other goals of this Act, including control of nonpoint and point sources of pollution, prevention and reduction of erosion, and protection of estuaries and lakes.

"(2) The Secretary shall prepare, update on a biannual basis, and make available to the public for purchase at cost, an indexed publication containing all Federal regulations, general permits, and regulatory guidance letters relevant to the permitting of activities in wetland areas pursuant to section 404(a). The Secretary and the Administrator shall also prepare and distribute brochures and pamphlets for the public addressing—

"(A) the delineation of wetlands,

"(B) wetland permitting requirements; and

"(C) wetland restoration and other matters considered relevant.".

SEC. 809. DELINEATION.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(v) DELINEATION.—

"(1) IN GENERAL.—The United States Army Corps of Engineers, the United States Environmental Protection Agency, and other Federal agencies shall use the 1987 Corps of Engineers Manual for the Delineation of Jurisdictional Wetlands pursuant to this section until a new manual has been prepared and formally adopted by the Corps and the Environmental Protection Agency with input from the United States Fish and Wildlife Service, Natural Resources, Natural Resources Conservation Service, and other relevant agencies and adopted after field testing, hearing, and public comment. Any new manual shall take into account the conclusions of the National Academy of Sciences panel concerning the delineation of wetlands. The Corps, in cooperation with the Environmental Protection Agency and the Department of Agriculture, shall develop materials and conduct training courses for consultants, State, and local governments, and landowners explaining the use of the Corps 1987 wetland manual in the delineation of wetland areas. The Corps, in cooperation with the Environmental Protection Agency and the Department of Agriculture, may also, in cooperation with the States, develop supplemental criteria and procedures for identification of regional wetland types. Such criteria and procedures may include supplemental plant and soil lists and supplementary technical criteria pertaining to wetland hydrology, soils, and vegetation.

"(2) AGRICULTURAL LANDS.—

"(A) DELINEATION BY SECRETARY OF AGRICULTURE.—For purposes of this section, wetlands located on agricultural lands and associated nonagricultural lands shall be delineated solely by the Secretary of Agriculture in accordance with section 1222(j) of the Food Security Act of 1985 (16 U.S.C. 3822(j)).

"(B) EXEMPTION OF LANDS EXEMPTED UNDER FOOD SECURITY ACT.—Any area of agricultural land or any discharge related to the land determined to be exempt from the requirements of subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.) shall also be exempt from the requirements of this section for such period of time as those lands are used as agricultural lands.

"(C) EFFECT OF APPEAL DETERMINATION PURSUANT TO FOOD SECURITY ACT.—Any area of agricultural land or any discharge related to the land determined to be exempt pursuant to an appeal taken pursuant to subtitle C of title XII of the Food Security Act of 1985 (16 U.S.C. 3821 et seq.) shall be exempt under this section for such period of time as those lands are used as agricultural lands.".

SEC. 810. FAST TRACK FOR MINOR PERMITS.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(w)(1) Not later than 6 months after the date of enactment of this subsection, the Secretary shall issue regulations to explore the review and practice of individual permits for minor activities. Minor activities include activities of 1 acre or less in size which also have minor direct, secondary, or cumulative impacts.

"(2) Permit applications for minor permits shall ordinarily be processed within 60 days of the receipt of completed application.

"(3) The Secretary shall establish fast-track field teams or other procedures in the individual offices sufficient to expedite the processing of the individual permits involving minor activities.".

SEC. 811. COMPENSATORY MITIGATION.

Section 404 (33 U.S.C. 1344) is amended by adding at the end the following:

"(x) GENERAL REQUIREMENTS.—(1) Each permit issued under this section that results in loss of wetland functions or acreage shall require compensatory mitigation. The preferred sequence of mitigation options is as set forth in subparagraph (A) and (C). However, the Secretary shall have sufficient flexibility to approve practical options that provide the most protection to the resource—

"(A) measures shall first be undertaken by the permittee to avoid any adverse effects on

wetlands caused by activities authorized by the permit.

"(B) measures shall be undertaken by the permittee to minimize any such adverse effects that cannot be avoided;

"(C) measures shall then be undertaken by the permittee to compensate for adverse impacts on wetland functions, values, and acreage;

"(D) where compensatory mitigation is used, preference shall be given to in-kind restoration on the same water body and within the same local watershed;

"(E) where on-site and in-kind compensatory mitigation are impossible, impractical, would fail to work in the circumstances, or would not make ecological sense, off-site and/or out-of-kind compensatory mitigation may be permitted within the watershed including participation in cooperative mitigation ventures or mitigation banks as provided in section 404(y).

"(2) The Secretary in consultation with the Administrator shall ensure that compensable mitigation by a permitee—

"(A) is a specific, enforceable condition of the permit for which it is required;

"(B) will meet defined success criteria; and

"(C) is monitored to ensure compliance with the conditions of the permit and to determine the effectiveness of the mitigation in compensating for the adverse effects for which it is required.".

SEC. 812. COOPERATIVE MITIGATION VENTURES AND MITIGATION BANKS.

Section 404 (33 U.S.C. 1344) is amended by adding at the end the following:

"(y)(1) Not later than 1 year after the date of the enactment of this Act, the Secretary and the Administrator shall jointly issue rules for a system of cooperative mitigation ventures and wetland banks. Such rules shall, at the minimum, address the following topics:

"(A) Mitigation banks and cooperative ventures may be used on a watershed basis to compensate for unavoidable wetland losses which cannot be compensated on-site due to inadequate hydrologic conditions, excessive sedimentation, water pollution, or other problems. Mitigation banks and cooperative ventures may also be used to improve the potential success of compensatory mitigation through the use of larger projects, by locating projects in areas in more favorable short-term and long-term hydrology and proximity to other wetlands and waters, and by helping to ensure short-term and long-term project protection, monitoring, and maintenance.

"(B) Parties who may establish mitigation banks and cooperative mitigation ventures for use in specific context and for particular types of wetlands may include government agencies, nonprofits, and private individuals.

"(C) Surveys and inventories on a watershed basis of potential mitigation sites throughout a region or State shall ordinarily be required prior to the establishment of mitigation banks and cooperative ventures pursuant to this section.

"(D) Mitigation banks and cooperative mitigation ventures shall be used in a manner consistent with the sequencing requirements to mitigate unavoidable wetland impacts. Impacts should be mitigated within the watershed and water body if possible with on-site mitigation preferable as set forth in section 404(x).

"(E) The long-term security of ownership interests of wetlands and uplands on which projects are conducted shall be insured to protect the wetlands values associated with those wetlands and uplands;

"(F) Methods shall be specified to determine debits by evaluating wetland functions, values, and acreages at the sites of proposed permits for discharges or alternations pursuant to subsections (a), (c), and (g) and methods to be used to determine credits based upon functions, values, and acreages at the times of mitigation banks and cooperative mitigation ventures.

"(G) Geographic restrictions on the use of banks and cooperative mitigation ventures shall be specified. In general, mitigation banks or cooperative ventures shall be located on the same water body as impacted wetlands. If this is not possible or practical, banks or ventures shall be located as near as possible to impacted projects with preference given to the same watershed where the impact is occurring.

"(H) Compensation ratios for restoration, creation, enhancement, and preservation reflecting and overall goal of no net loss of function and the status of scientific knowledge with regard to compensation for individual wetlands, risks, costs, and other relevant factors shall be specified. A minimum restoration compensation ratio of 1:1 shall be required for restoration of lost acreage with larger compensation ratios for wetland creation, enhancement and preservation.

"(I) Fees to be charged for participation in a bank or cooperative mitigation venture shall be based upon the costs of replacing lost functions and acreage on-site and off-site; the risks of project failure, the costs of long-term maintenance, monitoring, and protection, and other relevant factors.

"(J) Responsibilities for long-term monitoring, maintenance, and protection shall be specified.

"(K) Public review of proposals for mitigation banks and cooperative mitigation ventures through one or more public hearings shall be provided.

"(2) The Secretary, in consultation with the Administrator, is authorized to establish and implement a demonstration program for creating and implementing mitigation banks and cooperative ventures and for evaluating alternative approaches for mitigation banks and cooperative mitigation ventures as a means of contributing to the goals established by section 101(a)(8) or section 10 of the Act of March 3, 1899 (33 U.S.C. 401 and 403). The Secretary shall also monitor and evaluate existing banks and cooperative ventures and establish a number of such banks and cooperative ventures to test and demonstrate:

"(A) The technical feasibility of compensation for lost on-site values through off-site cooperative mitigation ventures and mitigation banks.

"(B) Techniques for evaluating lost wetland functions and values at sites for which permits are sought pursuant to section 404(a) and techniques for determining appropriate credits and debits at the sites of cooperative mitigation ventures and mitigation banks.

"(C) The adequacy of alternative institutional arrangements for establishing and administering mitigation banks and cooperative mitigation ventures.

"(D) The appropriate geographical locations of bank or cooperative mitigation ventures in compensation for lost functions and values.

"(E) Mechanisms for ensuring short-term and long-term project monitoring and maintenance.

"(F) Techniques and incentives for involving private individuals in establishing and implementing mitigation banks and cooperative mitigation ventures.

Not later than 3 years after the date of the enactment of this subsection, the Secretary shall transmit to Congress a report evaluating mitigation banks and cooperative ventures. The Secretary shall also, within this time period, prepare educational materials and conduct training programs with regard to the use of mitigation banks and cooperative ventures.".

SEC. 813. WETLANDS MONITORING AND RESEARCH.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(z) The Secretary, in cooperation with the Administrator, the Secretary of Agriculture, the Director of the United States Fish and Wildlife Service, and appropriate State and local government entities, shall initiate, with opportunity for public notice and comment, a research program of wetlands and watershed management. The purposes of the research program shall include, but not be limited—

"(1) to study the functions, values and management needs of altered, artificial, and managed wetland systems including lands that were converted to production of commodity crops prior to December 23, 1985, and report to Congress within 2 years of the date of the enactment of this subsection;

"(2) to study techniques for managing and restoring wetlands within a watershed context;

"(3) to study techniques for better coordinating and integrating wetland, floodplain, stormwater, point and nonpoint source pollution controls, and water supply planning and plan implementation on a watershed basis at all levels of government; and

"(4) to establish a national wetland regulatory tracking program on a watershed basis.

This program shall track the individual and cumulative impact of permits issued pursuant to section 404(a), 404(e), and 404(h) in terms of types of permits issued, conditions, and approvals. The tracking program shall also include mitigation required in terms of the amount required, types required, and compliance.".

SEC. 814. ADMINISTRATIVE APPEALS.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(aa) ADMINISTRATIVE APPEALS.—

"(1) REGULATIONS ESTABLISHING PROCEDURES.—Not later than 1 year after the date of the enactment of the Wetlands and Watershed Management Act of 1995, the Secretary shall, after providing notice and opportunity for public comment, issue regulations establishing procedures pursuant to which—

"(A) a landowner may appeal a determination of regulatory jurisdiction under this section with respect to a parcel of the landowner's property;

"(B) a landowner may appeal a wetlands classification under this section with respect to a parcel of the landowner's property;

"(C) any person may appeal a determination that the proposed activity on the landowner's property is not exempt under subsection (f);

"(D) a landowner may appeal a determination that an activity on the landowner's property does not qualify under a general permit issued under this section;

"(E) an applicant for a permit under this section may appeal a determination made pursuant to this section to deny issuance of the permit or to impose a requirement under the permit; and

"(F) a landowner or any other person required to restore or otherwise alter a parcel of property pursuant to an order issued under this section may appeal such order.

"(2) DEADLINE FOR FILING APPEAL.—An appeal brought pursuant to this subsection

shall be filed not later than 30 days after the date on which the decision or action on which the appeal is based occurs.

"(3) DEADLINE FOR DECISION.—An appeal brought pursuant to this subsection shall be decided not later than 90 days after the date on which the appeal is filed.

"(4) PARTICIPATION IN APPEALS PROCESS.—Any person who participated in the public comment process concerning a decision or action that is the subject of an appeal brought pursuant to this subsection may participate in such appeal with respect to those issues raised in the person's written public comments.

"(5) DECISIONMAKER.—An appeal brought pursuant to this subsection shall be heard and decided by an appropriate and impartial official of the Federal Government, other than the official who made the determination or carried out the action that is the subject of the appeal.

"(6) STAY OF PENALTIES AND MITIGATION.—A landowner or any other person who has filed an appeal under this subsection shall not be required to pay a penalty or perform mitigation or restoration assessed under this section or section 309 until after the appeal has been decided.".

SEC. 815. CRANBERRY PRODUCTION.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(bb) CRANBERRY PRODUCTION.—Activities associated with expansion, improvement, or modification of existing cranberry production operations shall be deemed in compliance, for purposes of sections 309 and 505, with section 301, if—

"(1) the activity does not result in the modification of more than 10 acres of wetlands per operator per year and the modified wetlands (other than where dikes and other necessary facilities are placed) remain as wetlands or other waters of the United States; or

"(2) the activity is required by any State or Federal water quality program.".

SEC. 816. STATE CLASSIFICATION SYSTEMS.

Section 404 (33 U.S.C. 1344) is further amended by adding at the end the following:

"(cc) STATE CLASSIFICATION SYSTEMS.—

"(1) GUIDELINES.—Not later than 1 year after the date of the enactment of this subsection, the Secretary, in consultation with the Administrator, the Secretary of Agriculture, and the Director of the United States Fish and Wildlife Service, shall establish guidelines to aid States and Indian tribes in establishing classification systems for the planning, managing, and regulating of wetlands.

"(2) ESTABLISHMENT.—In accordance with the guidelines established under paragraph (1), a State or Indian tribe may establish a wetlands classification system for lands of the State or Indian tribe and may submit such classification system to the Secretary for approval. Upon approval, the Secretary shall use such classification system in making permit determinations and establishing mitigation requirements for lands of the State or Indian tribe under this section.

"(3) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to affect a State with an approved program under subsection (h) or a State with a wetlands classification system in effect on the date of the enactment of this subsection.".

SEC. 817. DEFINITIONS.

Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(26) The term 'wetland' means those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions.

"(27) The term 'discharge of dredged or fill material' means the act of discharging and any related act of filling, grading, draining, dredging, excavation, channelization, flooding, clearing of vegetation, driving of piling or placement of other obstructions, diversion of water, or other activities in navigable waters which impair the flow, reach, or circulation of surface water, or which result in a more than minimal change in the hydrologic regime, bottom contour, or configuration of such waters, or in the type, distribution, or diversity of vegetation in such waters.

"(28) The term 'mitigation bank' shall mean wetland restoration, creation, or enhancement projects undertaken primarily for the purpose of providing mitigation compensation credits for wetland losses from future activities. Often these activities will be, as yet, undefined.

"(29) The term 'cooperative mitigation ventures' shall mean wetland restoration, creation, or enhancement projects undertaken jointly by several parties (such as private, public, and nonprofit parties) with the primary goal of providing compensation for wetland losses from existing or specific proposed activities. Some compensation credits may also be provided for future as yet undefined activities. Most cooperative mitigation ventures will involve at least one private and one public cooperating party.

"(30) The term 'normal farming, silviculture, aquaculture and ranching activities' means normal practices identified as such by the Secretary of Agriculture, in consultation with the Cooperative Extension Service for each State and the land grant university system and agricultural colleges of the State, taking into account existing practices and such other practices as may be identified in consultation with the affected industry or community.

"(31) The term 'agricultural land' means cropland, pastureland, native pasture, rangeland, an orchard, a vineyard, nonindustrial forest land, an area that supports a water dependent crop (including cranberries, taro, watercress, or rice), and any other land used to produce or support the production of an annual or perennial crop (including forage or hay), aquaculture product, nursery product, or wetland crop or the production of livestock.".

TITLE IX—MISCELLANEOUS

SEC. 901. OBLIGATIONS AND EXPENDITURES SUBJECT TO APPROPRIATIONS.

No provision or amendments of this Act shall be construed to make funds available for obligation or expenditure for any purpose except to the extent provided in advance in appropriation Acts.

Mr. SAXTON. Mr. Chairman, let me begin by expressing my personal appreciation and the appreciation of many of my colleagues for the cooperation shown by the chairman of the committee in helping to bring forward this rule, and the opportunity of those of us who have some differences with the committee bill, and giving us an opportunity to express those differences as well as to offer amendments like the one at the desk.

I would also like to express my appreciation for the gentleman from New York [Mr. BOEHLERT] and the gentleman from Indiana [Mr. ROEMER], both of whom have worked many long hours along with me and my staff in working to bring forth the amendment that we are considering at this time.

I think it is noteworthy to mention that while this is a substitute amendment, that it adopts some 70 to 75 percent of the committee draft, and that the language of the gentleman from Pennsylvania [Mr. SHUSTER] in those cases remains the same.

There are several however, sections of the bill that we believe can be improved, and I just would like to talk about those several sections for just a minute.

As many of my colleagues know, having heard previous statements that I and others have made today, those of us who live in and represent areas of the country that are densely populated, or that are in coastal areas or that are in areas such as the Mississippi River Valley and other environmentally sensitive ecosystem type areas around the country have very serious concerns with at least four sections. One is the section that involves wetlands. The second is the section that involves nonpoint sources of pollutions. The third is in the permitting system, and what the committee mark does to the permitting process in terms of eliminating it is very effective. And the fourth, at least for me and for others I believe, is the issue of ocean dumping, and I would just like to address those four areas for just a minute.

With regard to wetlands, it is pretty obvious that in New Jersey, where we estimate that 90 percent of our wetlands would be declassified as wetlands under the language of the committee bill, this causes a great deal of concern inasmuch as wetlands play a very vital environmental role in coastal areas, and so if I, as I am, were a representative of a coastal area anywhere from Maine to Florida on the east coast I would be terribly concerned about the effect of this bill, or if I were a representative from the Gulf States bordering on the Gulf of Mexico I would be terribly concerned about the provisions of bill, and of course if I were from California or Oregon or Washington State I would be equally concerned by the provisions as they relate to wetlands.

Of course we all know as well that wetlands act as a natural filtering system and act as the very basis of life in many cases, and so the committee mark, which does what we think is wrong things to the concept of wetlands protection, needs to be rewritten, and our bill does that.

With regard to the nonpoint source pollution program and the Coastal Zone Management Act, which in its very nature creates a partnership between State governments and the Federal Government with regard to this

very important nonpoint issue, was also done, we think, significant harm by the committee mark. And we believe, therefore, that changes are necessary.

Those of us who have had problems with point sources of pollution have been able to identify such things as outfalls into our streams and rivers and bays and oceans. We have been able to deal with them. They are a relatively simple task to take care of, and I say relatively simple. It is never easy nor it is ever simple, but at least you can identify the source of pollution.

With regard to nonpoint sources, it is a much more difficult task, and the CZMA sets up this partnership between the State and Federal Government in order to identify and develop programs in order to deal with nonpoint sources, and here again we would maintain what the coastal States association have endorsed, as a matter of fact CZMA language which solves this problem.

With regard to storm water discharge, obviously it is a very big issue and a problem that creates a great deal of damage to our coastal environment as well as to other tributaries around the country, and here again the permitting process is damaged severely under the language of the committee mark. And so we would make significant changes and do in the committee substitute which we will be voting on a little bit later today.

Finally with regard to ocean dumping, this has been a tremendous task which we have done on a bipartisan basis; the gentleman from New Jersey [Mr. PALLONE] is here and our former colleague, Bill Hughes, all worked together to put an end to ocean dumping. We address in our substitute only that section of the bill that has to do with dredge spoil deposit offshore.

So we ask our colleagues to support our substitute, and I thank the Members for their consideration.

Mr. PETERSON of Minnesota. Mr. Chairman, I move to strike the last word.

Mr. Chairman, as I said earlier, I represent an area that has a lot of wetlands, and I have been involved with this issue all of my political career in the State legislature, and now since I have been in Congress to some extent, and I think people ought to read what is in this bill.

The gentleman says they have 75 percent of what is in the Shuster bill, but you have to look at what the content is and realize some of things that have been left out. First of all, there is no risk assessment at all in this bill, No. 1.

No. 2, in the wetlands area, you know in our country we have been trying to simplify this process. What is driving people crazy is they have got to go to all of these agencies and they overrule each other and they do not talk to each other and they do not agree on things, and cause an untold amount of problems for my constituents. What this bill is going to do if you take it out and read it, it is going to create a new wetlands coordinating commission that is going to be appointed by the administrator of the Environmental Protection Agency, which we have been trying to get out of this process because frankly they do not belong in the process in the farm country, and they are going to create a coordinating committee that is going to have 18 Federal agencies trying to coordinate some kind of wetlands policy. And if I could just read some of the things that this new committee is supposed to do, I think that folks when they start taking a look at what is in this bill are going to have some different ideas.

They are going to help coordinate Federal, State, local wetland planning, regulatory restoration programs on an ongoing basis to reduce duplication, resolve potential conflicts, and efficiently allocate manpower.

But let me tell Members what the problem is in my county, it is not the law that is the problem so much, it is the people that are trying to implement the law.

I have a county, two counties right next to each other, and in one county where the people used some common sense and worked together they resolved all of the wetlands problems without a single ripple. You go to the next county where you had some people that were rigid and did not want to work with each other, and you have the biggest hornets' nest and the biggest mess you have ever seen, and I submit any change in the law is not going to solve that kind of problem.

And clearly setting up a coordinating committee with 18 Federal agencies is not going to make this situation better. It is going to make it worse.

Last of all, I also heard this story that the wetlands are so important, a public treasure, and they are important to all of us in this country and we agree with that. But there is this point of view and mostly I think by urban folks, they somehow or another think we out in the country ought to pay that entire burden.

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Well, I submit that if wetlands are that important, and I think we agree that they are, then we all, as a nation, need to pay for the cost of this, and that is what we are trying to do with some of the changes that were in the private property rights bill, and also some of the changes that are in 961, by taking that, recognizing that wetlands are important and something that we want to maintain, but spreading that cost across all of the people in this country, not just the people upon which the wetlands happen, their property where the wetlands happen to reside.

Mr. Chairman, last of all, I have been working on the conservation reserve program in the Committee on Agriculture. When that program was set up, wetlands were excluded from the Conservation Reserve program. We created another program called the wetlands reserve which was never funded and does not have public support.

What we need to do, rather than take this regulatory approach to wetlands, we need to take and change the Conservation Reserve so the No. 1 priority to go into the CRP is wetlands, a voluntary program, a 10-year program. We are going to preserve way more wetlands in that kind of an approach than we are setting up some kind of a committee with 18 agencies involved and some kind of bureaucracy. That is the last thing we need to do.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from New Jersey.

Mr. SAXTON. I would just like to point out to the gentleman I share your concerns about building bigger bureaucracies and establishing committees on top of committees.

The Wetlands Coordinating Committee is something that is endorsed by the Governors, that would have Federal Representation, State Representation, local representation in order to look at individual cases to try and determine where we believe this is warranted. If we all agree, as you stated, I agree with you, that wetlands are important, we have to have some mechanism in which to deal with them. This is a partnership effort established and created in cooperation with the States in order to carry out this coordinating function.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. PETERSON] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. PETERSON of Minnesota was allowed to proceed for 2 additional minutes.)

Mr. PETERSON of Minnesota. If I could just respond to the question, you know, with all due respect, you ought to come and see what is going on in Minnesota. It is the State of Minnesota that has created the bigger hornet's nest than the Federal Government. From my standpoint, if you see what has been happening with these State laws, they are causing more problems than we are, and as I understand it, it is the wetlands managers in the States that support this, not the Governors and elected officials.

Mr. SAXTON. The National Governors' Association supports this.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. PETERSON of Minnesota. I yield to the gentleman from New York.

Mr. BOEHLERT. I would like to make two points. If it is the State of Minnesota that is giving you some

problems, I suggest you deal with the State and not question the Federal law.

Mr. PETERSON of Minnesota. The Federal law is a problem, too.

Mr. BOEHLERT. I want to point out on delineation, section 809 of the bill. I want to stress this, delineation by the Secretary of Agriculture, for purposes of this section, wetlands located on agricultural land and associated nonagricultural lands shall be delineated solely by the Secretary of Agriculture. That is critically important; not by the Environmental Protection Agency, not by some commission, solely by the Secretary of Agriculture. We are very sensitive to the needs of the agriculture community.

I am privileged to represent a district that has a large agricultural interest.

Mr. PETERSON of Minnesota. Just to answer the question, why do we need a coordinating committee with all of these agencies, if we are going to give the power to the Secretary of Agriculture? I mean, the trouble that I have had out there is that we get everybody else involved in these permits but you cannot get an answer half of the time from these agencies. If we get set up some new structure, we have got all of these agencies involved, and the EPA is in charge; even if you give it to the Secretary of Agriculture, I do not think it is going to work.

The CHAIRMAN. The time of the gentleman from Minnesota [Mr. PETERSON] has again expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. PETERSON of Minnesota was allowed to proceed for 1 additional minute.)

Mr. BOEHLERT. Let me stress once again on agriculture, solely by the Secretary of Agriculture, not some commission, but the commission that is set up outside of this to deal with nonagricultural lands is set up to give guidance to the States. The National Governors' Association, we have embraced in our substitute specific language of the National Governors' Association dealing with the subject of wetlands. We agree with you, we want to give our Governors, those are the laboratories, we want to give them more responsibility, more flexibility.

Mr. PETERSON of Minnesota. Just to close this off, I have a letter here from just about every agriculture group, soil-water conservation groups that I know of in my State, they are opposed to this substitute. They support the chairman's bill, 961. I would urge defeat of the Boehlert substitute.

Mr. BOEHLERT. If the gentleman will yield further, let me point out that this is a 334-page bill that was just made available Thursday. The report was just available yesterday for the first time. They have not read the report.

Mr. ROEMER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of this bipartisan, commonsense, locally driven bill to provide solutions to provide clean water to our constituents.

I want to start out by articulating my great respect for the gentleman from New Jersey [Mr. SAXTON] and the gentleman from New York [Mr. BOEHLERT].

I think the elections in November of 1994 were about bipartisanship and common sense and trying to reinvent Washington, DC, and come up with locally driven solutions, and that is precisely what this substitute does.

When I was a little boy and we used to go up to Lake Michigan, Lake Michigan borders my district, the Third District of Indiana, and we would try to find a spot in the sand to spread beach towels where there were not dead fish and dead seaweed and trash and all kinds of problems from Lake Michigan washed upon the shore. It was difficult to do it. Certainly we did not compete much with other people trying to go swimming or catch some sun.

We had huge difficulties with pollution on Lake Michigan. Now it is beautiful. The water is clean. We have festivals and fishing exhibits. We have all kinds of development. We have boating. We have condos and houses springing up along Lake Michigan is my district.

What we need to do, ladies and gentlemen, is come up with a common sense bill that does not swing so far to the left or to the right but comes firmly down in the middle to protect our clean water, to encourage business, to encourage a strong economy and to encourage a clean water future for our children.

I talk about the Great Lakes and Lake Erie as a great example of this. Twenty years ago, people used to joke about lighting Lake Erie on fire or walking across Lake Erie. Now they have built a brand new baseball stadium that is the pride of Cleveland that has a view of Lake Erie that has brought back the city.

The Clean Water Act has been part of that. Now, certainly, we can say that there are a great deal of problems with the Clean Water Act. They did not use, they have not used enough common sense. They have been too prescriptive in a lot of ways, especially in the wetlands where I hear from my farmers time in and time out, day after day, and what we try to do with this legislation, we try to keep about 70 percent of 961 and we try to come up with commonsense solutions on wetlands and other areas and incorporate that to improve this bill.

I have been on farms in my district where a farmer says to me, he has taken a backhoe in his back yard and accidentally broken some tile, and then the Federal Government wants to come along and say, "This is a wetlands. I am sorry, Harry, this is our land."

Our legislation gives the property right to the owner. We do want to make sure that that farmer has the privilege and the right to protect his land.

But we also want to attain a balance of not taking away 60 or 70 percent of the wetlands in this country.

I would also like to talk a little bit about the economy and businesses. A small business owner in my district who employees 700 people in four different plants was in my office. He said, "I strongly support the Saxton-Boehlert-Roemer substitute. I belong to the chamber of commerce. I belong to the host of business organizations, but I manufacture small boats and employ 700 people. We cannot roll back legislation that protects clean water. We need a fair compromise here." That is what this substitute achieves. It does not do it by achieving Washington standards on our wetlands solution.

We say that the National Governors' Association should develop the answer. They have simplified the permitting process and expanded the role for State wetland managers, moving the decision process directly to the local level. We have adopted the State solution.

I encourage my colleagues, for the sake of common sense and bipartisanship, to support this Saxton-Boehlert-Roemer substitute.

Mr. CLINGER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to oppose the substitute amendment and in support of H.R. 961, and make no mistake about it, this substitute is being presented as a middle-of-the-road compromise, but it is much more than that.

Basically, it returns the status quo. It really retains many of the provisions in the existing law that have been the source of most of the objections and criticisms that we have seen come against the Clean Water Act.

In the time that I have been in the House, I think it has become very clear to me this institution as an institution resists change. It is reluctant to embrace change, is reluctant to recognize that times change and that, therefore, legislation needs to be fashioned to meet that change. It really is my belief that some of the opponents of the committee's bill and the supporters of this bill fear change, because it represents change in doing business by removing highly prescriptive, top-down federalism which is now integral to virtually all environmental programs that we have dealt with over the years.

This bill, I think, represents for the first time in recent memory the Federal Government will cede, this is almost unheard of, will cede some authority in the environmental arena to State and local government, giving them greater latitude to provide solutions to vexing pollution problems.

What the opponents of the committee bill and the proponents of the substitute choose to ignore rather artfully, I would have to say, is H.R. 961 does not turn back the clock on environmental standards. It does, in fact, lateral some of the responsibility and sets the stage for implementing locally designed solutions. And is that not what really we heard in the election last year, that people are crying out for the opportunity to use their own creativity to come up with solutions to unique problems? We are not talking about eroding or cutting back standards. We are saying give localities the ability to deal creatively with their own problems.

Environmentalists, the more rigid environmentalists, embrace the current program because it has worked and worked rather well these past 23 years. But I think in the face of vastly changed circumstances which we have now, they are unwilling to cede to State and local governments any degree of autonomy as we move to address more complicated and difficult problems, and they are unwilling to embrace innovative approaches that may achieve comparable or better cleanup standards at significantly lower costs.

Bear in mind, Mr. Chairman, that when the clean water program was first established, the national deficit was a mere fraction of its current size, and the Federal Government was at that time handing out huge grants to pay for up to 80 percent of the construction costs. Those days are long gone, have been gone forever. Today the market is radically different. The chief distinction being the elimination of the grants, as I have said, and communities now contemplating construction of wastewater plants are generally very small, secondary treatment standards are high, and the cost of technology has gone through the roof.

These small communities, in my congressional district, are emblematic of others around this country. This results in a very serious affordability problem.

Earlier this year the Congress, I think, recognized the tough financial challenges which face our communities when it passed the unfunded mandates legislation which I had the honor to bring to the floor saying we are no longer going to impose new requirements without providing resources to pay for them, a very simple proposal, but one which we, frankly, had difficulty even getting consideration for in this Congress.

This bill, the committee bill, is consistent with this public law by increasing the Federal contribution to State revolving funds and giving greater flexibility to States and localities to comply with the Clean Water Act, and I think that, to me, is the most critical part of this legislation, the fact that it does provide flexibility for the first time.

Take a close look at those who support and those who oppose the committee bill. Groups favoring the bill include many associations, as we have heard, representing State and local governments. Those opposed are nonprofit associations, environmentally oriented, nonprofit associations. State and local governments do not want to turn back the clock on environmental cleanup, and I think that is implicit perhaps in some of the dialogue we have heard today that somehow the States and local governments cannot be trusted, that they are going to insidiously subvert all the efforts made over the years to clean up, but State and local governments merely want a greater voice in devising cost-effective solutions.

□ 1615

Mr. Chairman, I would urge opposition to the substitute amendment.

The CHAIRMAN. The time of the gentleman from Pennsylvania [Mr. CLINGER] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. CLINGER was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. Mr. Chairman, I say to the gentleman thank you for the time. Let me complete my statement, and then I'll be happy to yield.

I would just stress that we think it is of interest. I think that for the first time we are really going to have some consideration for what are the compliance costs, what does it cost to carry out the number of the mandates that we have had in the past, but I think that the environmental community, which has never shown too much concern or interest in, frankly, what the costs that we have imposed on the communities would be, I think would still rather straitjacket small communities insisting that they adhere to a national prescribed program specifically detailing in detail precisely how each community must meet the requirements without with regard to the financial consequences borne by the rate of players, and for that reason I would again oppose the amendment.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. CLINGER. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, my colleague points out that the bill will not turn back the clock. I would point out that the bill, as reported by the Committee, would repeal the storm water section. The bill would repeal the coastal zone section.

I would also point out that we recognize that there are a number of provisions in existing law that need to be addressed and some changes need to be made. That is why the Saxton-Boehlert-Roemer substitute has 70 percent of the language identical to the committee bill, because we do recognize some changes are in order. But we want to do it in a commonsense way, not just throw out everything in the name of flexibility, and I could not agree more with the gentleman, that we do want to give the Governors more responsibility. That is why our section on wetlands totally embraces the proposal advanced by the National Governors Association. That is why our section dealing with coastal zone management totally embraces the language advanced by the Coastal States Organization which represents 30 States and 30 Governors.

Mr. BORSKI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wish to express my support for the substitute offered by the gentleman from New Jersey.

I congratulate the gentleman from New Jersey [Mr. SAXTON], the gentleman from New York [Mr. BOEHLERT], and the gentleman from Indiana [Mr. ROEMER] for their work on this substitute which gives the members of this House a true choice.

The substitute makes practical and commonsense changes to the Clean Water Act while maintaining environmental protection.

H.R. 961 reverses 20 years of environmental progress.

The committee bill simply rolls back the Clean Water Act with waiver piled on top of exemption piled on top of loophole.

H.R. 961 would stop the cleanup that has taken place for 2 decades. It would not maintain current national water standards.

The committee bill has one purpose and one purpose only—to allow more pollution in our Nation's rivers, lakes and streams.

H.R. 961 weakens the requirements for industry to treat its discharges.

The bill provides far too many chances for local governments to discharge sewage that has not received secondary treatment.

It is waiver after waiver, loophole after loophole.

On top of that, the bill removes protection for 60 to 80 percent of the Nation's wetlands simply by ignoring the scientific evidence and redefining wetlands.

The authors of this bill couldn't even wait for the National Academy of Sciences to finish its study of wetlands which was released yesterday.

H.R. 961 simply tells us what a wetland is, regardless of the scientific evidence. Next, it will tell us the world is flat.

H.R. 961 also rejects the advice of the Coastal States Organization and repeals the Coastal Nonpoint Pollution Program—the one effective non-point pollution program we have.

The substitute has none of the weakening provisions of the committee bill.

It does provide needed flexibility in changes in the State Revolving Loan Fund Program.

It makes the changes in the Coastal Nonpoint Program that were requested by the Coastal States Organization.

It proposes language on wetlands and watersheds requested by the National Governors' Association with additional changes—changes that were included in H.R. 961—to help the Nation's farmers.

This substitute will restore reason and common sense to this process.

The substitute will make many of the changes that are needed in the Clean Water Program.

What it will not do is roll back clean water standards.

For anyone who wants to continue an effective Clean Water Program, this substitute should be your choice.

I urge support of the Boehlert-Roemer-Saxton substitute.

Mr. SOLOMON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, on behalf of business, and industry and farmers in Upstate New York where I come from, I rise in the strongest possible opposition to the Boehlert amendment.

As my colleagues know, a strange thing happened back in 1974. It was the year of Watergate.

Now, Mr. Chairman, there was a big turnover in the House, and a lot of people were elected. They, unfortunately, were not businessmen. For the most part they were lawyers. There is nothing bad about lawyers, but most of them were lawyers, or professors, or professional politicians or bureaucrats. They came in, and they took over this place, and they proceeded over the next 5 or 6 years to ramrod through legislation, as my colleagues know, creating the Department of Education, the Department of Energy, and vastly expanding the Environmental Protection Agency, the Army Corps of Engineers, and they brought the economy in this country to a standstill.

In upstate New York, Mr. Chairman, our people have been persecuted by these regulations. We are the most overtaxed, overregulated State in the Nation, and today they are about to get a little relief. I was sitting in my office because we do not have a Committee on Rules meeting today, which normally I spend all day there, and have to come back at 8 o'clock at night and work for 4 or 5 hours to get caught up. But today I was going to get caught up during the daytime, and I heard a lot of these people, still here from maybe that Watergate class of 1974, but a lot of later ones, too, coming from New York City, some of them, a lot of the metropolitan areas. They are talking about the dirty polluters and how this Boehlert amendment is going to stick it back to them again. We are not going to put up with those dirty polluters, they say.

Mr. Chairman, let me just read briefly this letter from these dirty polluters. They are my constituents.

The New York State Corn Growers Association, some of the most admirable people in America, the Dairy League Cooperative, New York Farm Bureau, the New York State Grange; these are people who have volunteered their lives for their communities, not only in military service, but in Little League and Boy Scouts. These are the dirty polluters. As my colleagues know, I could go on and read all of these names from all of these organizations, but they oppose the Boehlert amendment because they want change. They want to be treated like decent human beings, and they have not been for a long time now. When Ronald Reagan came into office, he could not change things back then because all the laws were in place. We could not change these laws because this House was controlled by the far left. We lost in 1974, lost a lot of good Democrats, too. As you know, we had a lot of good conservative Democrats controlling committees in those days. Now they are all gone, and all we had left in control before last November was the far left of the Democratic Party which would not allow us to make these changes. We could not put through risk assessment and cost-benefit analysis for regulations. We could not pass a balanced budget amendment and line item veto because we could not even get it on the floor of this House.

Well, we have our chance today to make vital correction, and that is why we need to defeat the Boehlert amendment, and we need to pass the committee reported legislation which is supported by all of these people.

Mr. Chairman, I insert for the RECORD letters in support of the original legislation and against my good friend's amendment:

MAY 10, 1995.

Hon. BUD SHUSTER,
Chair, House Transportation and Infrastructure Committee, Rayburn House Office Building, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Agriculture in the State of New York is alive and well. We are a leading producer of many fruits and vegetables, as well as being the nation's third leading dairy state. Once concern which crosses all commodity lines is the fate of the Clean Water Act. We have watched the debate in the House Transportation and Infrastructure Committee with interest. After careful review, we, the undersigned representing all facets of production agriculture and agribusiness in the Empire State, fully support the provisions of H.R. 961.

This bill embraces a spirit of bipartisan cooperation much like we have seen develop in New York to address non-point source water pollution. Voluntary, incentive based programs which are watershed specific will be successful if given the opportunity. Also included in this bill is an improved wetlands definition. It assures the farmer gets fair and prompt wetlands decisions and compensation when regulatory decisions devalue property.

Thank you for your leadership in bringing this bill to the floor for a scheduled vote May 12th. Again, we support H.R. 961 in its current form and do not support attempts by any member of congress to make significant modifications.

Sincerely,

Agway, Inc., Stephen Hoefer, Vice President; NYS Corn Growers, James Czub, President; Dairylea Cooperative, Inc., Clyde Rutherford, President; New York Farm Bureau, John Lincoln, President; New York State Grange, William Benson, Master; Empire Farm Credit, Robert Egerton Jr., President and Chief Executive Officer; Pioneer Farm Credit, William Lipinski, President and Chief Executive Officer; Farm Credit of Western New York, Robert Kesler, President and Chief Executive Officer; Milk Marketing, Inc., Eastern Region, Joseph C. Mathis, Assistant General Manager.

THE AMERICAN FARM BUREAU FEDERATION,
Washington, DC, May 4, 1994.

Hon. NEIL ABERCROMBIE,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN ABERCROMBIE: The American Farm Bureau Federation wants to reiterate our strong support for H.R. 961 as reported from the Committee on Transportation and Infrastructure. This bill strengthens efforts to address our remaining water quality problems and establishes a much needed common-sense approach to wetland regulation.

We are strongly opposed to the Boehlert-Shays-Saxton substitute and any similar amendments that would roll back the bipartisan and popularly backed wetland reforms contained in this bill. Such amendments would perpetuate the current bureaucratic and regulatory maze that has burdened agriculture and many other segments of society for years.

We consider the defeat of these hostile amendments to H.R. 961 to be key votes of the highest priority for farmers and ranchers.

We appreciate your support and commitment to the long-sought reforms contained in this important legislation.

DEAN R. KLECKNER,
President.

MAY 3, 1995.

Hon. BUD SHUSTER,
Chairman, Committee on Transportation and Infrastructure, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The undersigned agricultural, agribusiness and soil and water conservation organizations wish to express our strong support for H.R. 961, The Clean Water Amendments of 1995, approved by the House Transportation and Infrastructure Committee on April 6, 1995. Our Community of interests has a direct investment in protecting water quality. Under your able leadership, H.R. 961 was passed with strong bipartisan support, 42–16. We are urging your colleagues to vote in favor of H.R. 961 when it is considered by the full House beginning May 10.

This bill strengthens efforts to ensure clean water and to address remaining water quality problems by stressing state and local leadership, as well as voluntary, incentive-based solutions to nonpoint source, stormwater and watershed planning. The

top-down, command and control methods of the last twenty-five years do not hold the solutions to our nation's remaining water quality problems. We commend Chairman Shuster and the bipartisan supporters of H.R. 961 for their leadership and consensus building process in advancing a more workable and constructive approach to achieving water quality success. These reforms help agriculture and rural communities achieve clean water goals without putting them out of business.

H.R. 961 is a reasonable and cost-effective approach to addressing water quality challenges. The bill provides common sense water quality policies based on a prioritized, risk-based strategy. It establishes clear goals for nonpoint source pollution for the first time and empowers states to establish partnerships with private landowners to address impaired waters through more flexible and cost-effective means. The legislation strengthens the nonpoint source program and encourages watershed planning through voluntary incentives, not federal mandates.

The bill also provides new resources to States for carrying out their Clean Water Act responsibilities. Major increases in funding for nonpoint source, state revolving funds, and other programs are necessary steps in continuing our efforts to improve water quality.

H.R. 961 also contains positive tools to help the agricultural community meet its water quality responsibilities. The bill provides incentives to individuals to implement site-specific water quality management plans. This legislation also includes significant wetlands policy reforms that are extremely important to agriculture. Written into the bill is an improved wetlands definition. The bill gives sole authority to the Secretary of Agriculture to delineate wetlands on agricultural lands. H.R. 961 assures the regulated community gets fair and prompt wetland decisions and compensation for landowners when regulatory decisions devalue property, consistent with the House-passed property rights legislation.

Again, we thank you for your strong leadership on this important legislation. H.R. 961 reflects water quality policy principles our organizations adopted by consensus well over a year ago. These principles, and the related provisions found in H.R. 961, will provide farmers the opportunity they desire to help address our nation's remaining water quality problems. The attached provides additional points on H.R. 961 from our perspective.

Sincerely,

AgriBank, FCB; Agricultural Retailers Association; Agway, Inc.; American Association of Nurserymen; American Crop Protection Association; American Crystal Sugar Company; American Farm Bureau Federation; American Feed Industry Association; American Sheep Industry Association; American Soybean Association; Apricot Producers of California; CENEX, Inc.; CF Industries, Inc.; ConAgra, Inc.; Countrymark Cooperative, Inc.; Egg Association of America; Equipment Manufacturers Institute; Farm Credit Bank of Wichita; Farmland Industries, Inc.; International Apple Institute; Maine Potato Growers, Inc.; MBG Marketing; MFA Incorporated; Milk Marketing Inc.; Minnesota Association of Cooperatives; National Association of State Departments of Agriculture; National Association of Wheat Growers; National Barley Growers Association; National Broiler Council; National Cattlemen's Association; National Corn Growers Association; National Council of Farmer Cooperatives; National Grain and Feed Association; National Grange; National Milk Producers Federation; National Potato Council; National Pork Producers Council; National Turkey Federation; National Water Resources Association; Riceland Foods, Inc.; Southern States Cooperative, Inc.; The Agricultural Council of California; The Fertilizer Institute; Tree Top Inc.; USA Rice Federation.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from New York, my very good friend.

Mr. BOEHLERT. I want my colleague to know that I am just as sensitive as he is to the plight of America's farmers. That is why, as the chairman of the northeast ag caucus, I have worked for 10 years to protect the interests of the farmers. That is why our bill includes, our substitute, not just BOEHLERT's, SAXTON and ROEMER, the same exemptions for agriculture as does the committee bill. That is why we have added in committee a $500 million provision per year for nonpoint-source pollution, because our farmers are sick of sanctimonious sermons. They want some assistance. They are responsible stewards of our land but they need some assistance as they deal with best management practices and the type of thing that they need to have to get on with the job because they are responsible stewards.

Mr. SOLOMON. Reclaiming my time, that is enough. Reclaiming my time, the gentleman's heart is in the right place, his legislation is in the wrong place. That is why all the dairy farmers and the apple growers oppose the gentleman's legislation and support the position of the gentleman from Pennsylvania [Mr. SHUSTER].

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. SOLOMON. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, I want to make the point that, if this is so good for the farmers, why are the farmers all opposed to it?

Mr. SOLOMON. They are not just opposed, they are vehemently opposed, and they want this legislation to pass.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

It has already been stated, but let me make it clear again. This amendment deletes property rights compensation from the bill.

I will say it again. It deletes property rights compensation from the bill, so that whatever one believe about wetlands management and wetlands regulation, if they believe that people ought to be compensated when their property is taken because of a wetlands regulation, they ought not vote for this amendment. This deletes it.

Second, it deletes risk assessment cost-benefit analysis. Many of you voted for this principle on the House floor in days gone by.

I say to my colleagues, if you believe in that principle, why would you support an amendment that deletes it from wetlands management and wetlands regulation? Little inconsistent, I would suggest. But let me give you some other reasons why you ought to oppose this amendment.

This amendment, unlike the original bill, literally takes the science academy scientific definition of wetlands and makes it the regulatory definition. I say to my colleagues, now, if you read the academy report, the academy report said this is how we think you ought to scientifically define wetlands, but how you ought to regulate them, which ones you ought to regulate and how in the public policy, is a political decision we can't make. You need a referenced decision. Here is one. Here is the definition, but then you decide on policy on how to regulate.

This bill will in fact mandate that the manuals adopt the scientific definition which, by the way, is the current kind of definition that is causing the problem in America today, definitions that talk about hydrology and vegetation and sometimes have very little to do with the real functional aspects of the wetland that is to be regulated.

Third, this bill not only does not compensate someone when the Government regulates your property away. This amendment says that you will mandatorily be required to mitigate in all cases where permits are granted and wetland functions are disturbed. In effect this bill mandates that in every permit given in this regulatory regime set up under this massive new Federal coordinating agency, that in every case the landowner is not only not going to be compensated for the taking of his property, he is going to have to pay for the privilege of being regulated and, in fact, lose the use of this property in every case where a permit is granted.

Imagine that. Not only does this amendment destroy the property rights provisions that my colleagues, and I, and 72 Democrats and almost all the Republicans joined in supporting just in the last hundred days, but it turns it on its head and says that:

> If you're granted a permit, not only will we not compensate you for any loss of value that may be a part of the limitation under that permit, but you're going to have to compensate the government and the public at large for the fact that you've been granted a permit.

Now the amendment goes on. It is even worse. When it defines what is a fill of a wetlands, this really gets good. The definition of a fill of a wetland now includes under this amendment the cutting of vegetation, cutting the grass. Cutting the grass on a lot that they are going to describe as a wetland

is now filling a wetland under this definition.

□ 1630

Protecting the vegetation now becomes a part of this wetlands protection program. You think you have problems with the Corps of Engineers today? You think you have problems with the EPA today, who works in cooperation with the environmental groups who support this amendment, going so far as to send them information that is confidential and illegally distributed, as I demonstrated on the House floor last night? You think you got problems with an agency out of control like that? Wait until you see an agency with the power to say we can regulate your grass cutting in America. We are going to go that far. That is the kind of amendment you fellows want to support on this side. That is the kind of amendment you want to support on this side.

Shame on you. If you think you have problems with regulations today, imagine, envision a situation where the scientists, not policymakers, not the Congress, the scientists say what is a wetland, what is going to get regulated. If you get a permit, you have to pay the Government for getting that permit. You do not get compensated for the loss of your property. And if you dare cut your grass without a permit, look out. That is a filling of a wetland under this definition.

This amendment creates a whole new regulatory authority to monitor all decisions, to coordinate not only wetlands regulations, but all flood control, all water management decisions, on a State and local and regional basis, and it creates it under authority that, as I pointed out to you, destroys property rights.

The CHAIRMAN. The time of the gentleman from Louisiana [Mr. TAUZIN] has expired.

(By unanimous consent, Mr. TAUZIN was allowed to proceed for 1 additional minute.)

Mr. TAUZIN. Mr. Chairman, it destroys property rights provisions, eliminates risk assessment cost-benefit analysis, turns it on its head, and forces you to pay the Government to get regulated. What a beautiful amendment. Anybody that votes for this better not go home.

Mr. GILCHREST. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Maryland.

Mr. GILCHREST. Mr. Chairman, I would like to ask the gentleman, I agree that scientists and researchers should not dictate policy for the United States. But if we are going to make policy, we ought to know what the scientists say what a wetland is.

Mr. TAUZIN. Mr. Chairman, reclaiming my time, the scientists in the study told us what they think a wetland is. Read the report carefully. This is a reference definition. We are not telling you to regulate all the wetlands.

Mr. GILCHREST. The scientists recommended we go on a region-by-region basis. Your bill does not do that.

Mr. TAUZIN. Let me complete the answer, please. The academy said this is a reference decision, a scientific decision. We are not telling you you ought to regulate all these wetlands. Your amendment says regulate all them if they meet the reference definition criteria. This amendment ought to be defeated.

Mrs. ROUKEMA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I certainly rise in strong support of the substitute amendment. I might just say in comment to that last interchange, I would suggest that we are not here today to pass a know-nothing piece of legislation. We should be here today passing legislation based on the 20 years of experience, more than 20 years of experience, that we have had, so that we can look at the successes of the past 20 years and correct the errors of the past.

I believe that is exactly what the Saxton-Boehlert-Roemer substitute does. It takes the best of both worlds. It does not say we are going to take two steps backwards instead of two steps forward. That is exactly why I am supporting it today. We must strive to maintain those aspects of the law that have proved clearly successful over the past 20 years and apply what we have learned in 20 years to the present situation. That is exactly the merit of this particular legislation.

With or without the dispute about what the National Academy of Sciences does or does not do, I think the best of the National Academy of Sciences wisdom is incorporated in this amendment and used to supplement it.

I also want to point out from the point of view of the State of New Jersey, but I think New Jersey's experience and concerns are equal in many other States, I want to point out that this is a very serious issue in the State of New Jersey, particularly the State which is the most densely populated State in the Nation and is clearly a coastal State. I think the committee bill proposes a much narrower definition of wetlands, and consequently large tracts of valuable wetlands will lose their protection in the State of New Jersey.

As has already been documented by my colleague, the gentleman from New Jersey [Mr. SAXTON], upwards of 80 percent of existing wetlands in New Jersey would face a changed status, and this would have a very serious detrimental effect on the quality of life and the drinking water quality for all of our citizens. The gentleman has laid that out for us.

It seems appropriate to me that we should take the advice of the experience of the last 20 years and apply it.

Second, as the gentleman from New Jersey [Mr. SAXTON] also carefully documented in his opening statements, the committee bill's language regarding nonpoint source pollution represents a dramatic change in existing policy that a coastal State like New Jersey simply cannot afford to endure.

These changes would bring significant negative economic impacts not only to New Jersey, but those negative impacts would apply to all coastal States. I suggest that my colleagues pay close attention to the problems of the Coastal Zone Management Act that Mr. SAXTON has already pointed out.

Third, the committee bill section on dredging is of some great concern to those of us in New Jersey, as I know it is to Representatives of other adjoining States. Although I know that some of our New Jersey people have been working on adjustments in the committee print, or the mark, on that subject, it is my understanding they are grossly inadequate to the standards that we want to see maintained in New Jersey.

In conclusion, I simply want to again endorse strongly this substitute amendment that we have before us.

Mr. Chairman, I rise in support of the Saxton-Boehlert-Roemer substitute amendment to H.R. 961, the Clean Water Acts Amendments of 1995.

Given that it is now more than 20 years after the original Clean Water Act was written, we must modify and improve this pivotal environmental law based on our experience and the documented successes of the period.

Mr. Chairman, this must not be a one step forward/two steps back exercise.

In updating the Clean Water Act, the Congress should strive to fix shortcomings of the existing program, without jeopardizing the progress that the United States has made in cleaning-up our water supply, at the same time we strive to maintain those aspects of this law that have clearly been successful. And that is what the Saxton-Boehlert-Roemer amendment does.

After reviewing the Public Works and Infrastructure Committee's version of H.R. 961, and consulting with the State of New Jersey's Department of Environmental Protection [DEP], I cannot supports its passage, in its present form.

In several areas, this legislation poses a serious threat to the State of New Jersey and its own efforts to carefully manage our water supply and environment.

First, the committee bill is proposing a new, much narrower definition of "wetlands". Consequently, large tracts of valuable wetlands will lose their protection, and could be vulnerable to development. According to some estimates, upwards of 80 percent of the existing wetlands in New Jersey would face a change in status under the committee's new language. And this in New Jersey the most densely populated State in the Nation which means that this would have a negative detrimental effect on the drinking water quality of our citizens.

On the other hand, the Saxton-Boehlert-Roemer alternative uses the definition of wetlands being proposed by the National Academy of Sciences which studied this issue exhaustively, and just released its recommendations to the Congress yesterday.

It seems appropriate to me that, on issues of considerable controversy and complexity, such as wetlands policy, the Congress can, and should, defer to nonpartisan scientific recommendations such as these.

Second, as my colleague from New Jersey, Representative SAXTON, has documented, the committee bill's language regarding nonpoint source pollution represents a dramatic change in existing policy that a coastal State like New Jersey simply cannot afford to endure. The committee bill, for example, repeals current requirements on States to implement aggressive programs to contain run-off from farms, land-use or cities. These changes would bring significant negative economic impact.

The Saxton-Boehlert-Roemer alternative contains language that basically reauthorizes the current Coastal Zone Management Act, which has worked well in helping States like New Jersey address the serious problems associated with run-off. This is of significant economic importance to New Jersey and to all coastal States.

Third, the committee bill's section on dredging is of some concern to the State of New Jersey. I know that some of my colleagues from New Jersey have been working with the committee on this portion of the bill, but I understand that our State remains concerned about how the committee bill's language would impact on its dredging program.

Before concluding, I would also note that while the Saxton-Boehlert-Roemer substitute differs from the committee bill in these specific respects, it has retained large segments of H.R. 961. For example, titles I, II, V, VI, Vii of the alternative are identical to the committee's proposal.

In conclusion, I will be supporting the Saxton-Boehlert alternative and urge all of my colleagues in the House to join me in working together to protect our water supply and environment, while providing State and local officials with some much-needed flexibility in doing so.

Mr. ROEMER. Mr. Chairman, will the gentlewoman yield?

Mrs. ROUKEMA. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I do not see the gentleman from Louisiana on the floor, but I did want to just briefly respond to a little bit of what the gentleman was saying.

In our substitute on page 130 there are exemptions on the wetlands and activities that do not require the permits, and in general this section reads:

(A) . . . Activities are exempt from the requirements of this section and are not prohibited or otherwise subject to regulation under this section . . . if . . . (i) result from normal farming, silviculture, aquaculture, and ranching activities and practices, including but not limited to plowing, seeding, cultivating, haying, grazing, normal maintenance activities, minor drainage, burning of vegetables in connection with such activities, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices . . .

We are not trying to say what will take place when somebody cuts some grass. We are exempting many of these things. There are these exemptions on the permits.

Mrs. ROUKEMA. I know. The scare tactics do not hold up under close examination.

Mr. PALLONE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise to support the substitute. Of course, I want to commend Mr. SAXTON and the other cosponsors of this substitute. I think it is important Mr. SAXTON mentioned in the beginning that this substitute adopts 75 percent of the draft of the gentleman from Pennsylvania, Mr. SHUSTER.

So those who think that somehow the substitute is a radical document that is significantly changing the bill are wrong. But the substitute does make four major changes in four major areas to the substitute that I think are necessary in order to protect the Nation's water quality.

With regard to wetlands, if I could go through the four, with regard to wetlands, it is a significant change for the better. As was mentioned, the bill itself classifies wetlands and specifically provides the takings language that has been looked at in this House before. I would submit that by doing the classification in the bill, you eliminate a significant amount of the Nation's wetlands, as well as wetlands in New Jersey, from any kind of supervision or any kind of regulatory process, and essentially you gut some of the wetlands protection that exists under the Clean Water Act.

The substitute by contrast does not include the classification system, does not include the takings language, and actually encourages States to get more involved in wetlands protection and taking over Federal regulatory authority.

Some of you know, I think, in our own State of New Jersey the Federal Government has actually approved New Jersey's wetlands program. This substitute would encourage that kind of delegation to the State and in effect encourages moving away from Federal regulatory control.

With regard to the nonpoint source pollution under the Coastal Zone Management Act and storm water discharge, in both cases the existing statute provides for mandatory program and States are moving in the direction of providing adequate nonpoint source pollution programs, also storm water discharge programs.

This bill that we have before us today would change the existing law and move essentially towards a voluntary system. A voluntary system will not work. Some States will adopt it and other States will not. We will not have a consistent program around the country to protect against nonpoint source and storm water discharges.

Last, Mr. Chairman, I would like to talk about the dredging provisions, because they are important. The bill right now changes the current Clean Water Act by essentially taking EPA out of the role of dealing with dredging of contaminated materials and disposal of contaminated dredge materials. I think that is wrong.

Essentially what the committee bill, or the committee mark does is to say that the Army Corps can provide and decide when contaminated dredge materials will be disposed, where they will be disposed, and also allows the Army Corps to provide for waivers against the very criteria that the corps might establish for disposal of contaminated dredge material. I think that that is wrong.

The EPA is our Environmental Protection Agency. The EPA should be involved in deciding whether or not we are going to have sites for disposal of contaminated dredge materials and where those should be and when it should be permitted and certainly when those waivers should be granted.

If you look at this substitute, it really makes some significant changes in these four areas, which are vital and increasingly more important to preserving our Nation's water quality, because as we know, the point source pollution increasingly has been dealt with. Our Clean Water Act has dealt with point source pollution, and we have made significant progress on that.

When you talk about wetlands preservation, nonpoint source, storm water discharge, these are the areas over the next 5 or 10 years where we need to make significant progress on trying to improve the Nation's water quality. If we move toward a voluntary system and get our EPA out of the process, if we declassify wetlands so that much of the wetlands of the Nation is no longer provided or included under any permit program, we are not going to see the goals of fishable and swimmable waters under the Clean Water Act met over the next decade or the next 20 years.

So I wanted to say how important I think it is for all of us to support this substitute. It is a bipartisan substitute, and the sponsors have really crafted some excellent legislation.

Mr. MICA. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition this afternoon to this substitute that has been offered. Basically, I have one reason for opposing this substitute, and that is because it only destroys all the work and effort that I have tried to bring to this Congress in the area of using cost-benefit analysis and risk assessment.

I think if we take a minute and look back and reflect on the last election,

you had the people of this country making a statement, and that statement that they made was a very clear statement that they did not want business as usual in the House of Representatives; that they did not want regulation as usual in the Congress of the United States or in its agencies. What they wanted was a change, a different approach.

You know, last year on the floor of the House of Representatives, and I served in this House and I will tell you it was run under a rather oppressive regime, because I tried to bring up cost-benefit analysis on the floor and it was denied, and it was denied in committee to give cost-benefit analysis and risk assessment an opportunity, it was denied in the Committee on Rules upstairs to give this an opportunity. We brought the issue before the House on February 2, and what happened? The entire House rebelled because we had an opportunity to bring up the question of cost-benefit analysis and risk assessment and applying it to regulations and to the biggest regulatory agency in the Federal Government, the Environmental Protection Agency.

□ 1645

And this entire House of Representatives, bucking the Vice President of the United States, bucking the Speaker of the House, bucking the committee chairman, bucking the House leadership, came out there and voted down that rule. That was the beginning of the change. It was the beginning when people started to say, Let us make some common sense out of the way this Congress and this Government imposes regulations on its citizens.

This substitute wipes out risk assessment, cost-benefit analysis. So what are we doing here? What progress have we made? Are we prepared to set back the clock on regulatory reform? And then under the Contract With America, the Members came out here, bipartisan, and the vote was, what, 1286 to 141. And if my math is correct, that is a bipartisan vote. They supported the cost-benefit analysis provisions and risk assessment provisions that are in this legislation.

So are we prepared this afternoon and in this legislation to wipe out all our progress, to say regulatory reform that the people have demanded and this Congress has demanded and the Members have voted on, is it time to wipe that out?

So there is only one problem with this bill. It wipes out everything we have done. It wipes out regulatory reform. It wipes out cost-benefit analysis.

Let me tell you what else it wipes out. I want to tell you, the other day I went to a grocery store and I met a gentleman. His name, I think, was Chuck. He was working behind the counter and I was buying a few items.

And Chuck said, "You are my Congressman. Mr. MICA, I want to tell you, you all are doing a good job."

I said, "Do you have any message? What would you like to see us do?"

He said, "Mr. MICA, there is just one thing I would like to see the Congress do." He says, "Use common sense."

That is what this legislation proposes, common sense, that we look at the costs, that we look at the benefit and we use risk assessment.

This amendment wipes all that out. It wipes out the hope of that gentleman, hundreds and thousands of Americans who sent to the polls and said, there needs to be a change in the conduct and the way this Government conducts its business.

So we have an opportunity. We are not going to throw out regulations. This bill does not throw out any regulations. It does not destroy the environment. It does not harm the environment. It does not do anything bad.

What it does is says, let us look at the costs. Let us look at the risks. Let us look at the benefits. Yes, indeed, my colleagues, we have had years to look at this. We have seen every county, every city, every State has said, let us make a change. They support the change that is advocated on a bipartisan basis by our committee.

So we can come out here and we can vote to set the clock back. We can return to the time of yesterday when we overregulated, when we put people out of jobs, when we put people out of business, when we lost our competitiveness stance, or we can make some progress and we can pass this legislation as it is proposed, without accepting this substitute, without going back and without destroying the progress that this Congress has made, both in the Contract With America and in every successive vote on the question of cost-benefit analysis and risk assessment.

There is only one thing wrong with this amendment and this proposal and this substitute. In fact, it destroys everything that we stand for as far as this Congress, everything we voted for, the 286 Members who supported regulatory reform, the successive votes that we have had in this Congress and the will of the American people.

I urge my colleagues to defeat this substitute, to enact the bill without changes, that we have a bipartisan agreement, that we have cities, counties, States, local government, associations and a broad base of support for what we are trying to do. And what we are trying to do is to do one thing, and that is what Chuck asked us to do, bring common sense to this process.

The CHAIRMAN. For the Members' understanding, this Chair will follow the precedent that members of the committee receive priority recognition and will go in that order.

Mr. PETRI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I reluctantly must oppose the substitute to H.R. 961 offered by Mr. SAXTON and Mr. BOEHLERT—two Members of Congress who are dedicated and sincere in their efforts and support for clean water programs.

Many of the provisions in the substitute are laudable and certainly deserve support. It is what is not in the amendment which is the problem. Unfortunately, many of the provisions of H.R. 961 which I believe make meaningful and significant reforms to the Clean Water Act are not included in this substitute.

For example, this substitute does not contain the stormwater program reforms which are found in section 322 of H.R. 961.

There is little dispute that the current stormwater permitting program simply does not work and hasn't since the day it was enacted. H.R. 961 corrects this problem by treating stormwater runoff as runoff—and not trying to regulate discharges through cumbersome and confusing permits. Instead, States will have a variety of tools—including site specific permits if necessary—which can be used to fashion a program that will be more effective and cover more facilities than is possible under the current program.

The stormwater provisions in H.R. 961 were developed with the close cooperation and consultation of the States and cities which are, after all, responsible for implementing the program. They support this new approach to stormwater control.

Let me also briefly mention one other area which has generated a lot of discussion over the past few weeks—that is the repeal of section 6217 of the Coastal Zone Act Reauthorization Amendments and the incorporation of certain successful elements of that coastal program into the nonpoint source program.

Over the past several years, I have spent many hours listening to various officials from my State of Wisconsin expressing their concerns about this program. In fact, Wisconsin may even pull out of the program because they just don't think it is worth it.

The Wisconsin Department of Natural Resources supports the repeal of section 6217. The secretary of the department sent a letter to me a few weeks ago which includes this statement about H.R. 961:

> We also support the elimination of the coastal non-point pollution control program contained in Section 6217 * * *. With the provisions proposed to be added to Section 319 to provide for protection of coastal waters, Section 6217 is no longer needed. We favor having one non-point source management program in Wisconsin that provides for the achievement of water quality goals in all the waters of the State, including coastal areas.

Again, while I applaud the intentions and sincerity of the sponsors of this substitute, I do not believe their

amendment is preferable to the overall approach of H.R. 961, and so I must urge defeat of this amendment.

Mr. TUCKER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I thought long and hard about this bill that we have before us here today. I have been a member of the committee with jurisdiction over this bill for the last 3 years. I have been a Member of this body. I have seen up close the difference between this bill and the one in the last Congress, the 103d Congress. I know there are a lot of concerns over the issues of nonpoint source pollution, storm water management, wetlands and risk assessment and cost-benefit analyses.

I have heard the complaints from witnesses who have testified in committee hearings. What I am hearing from people across the country, Mr. Chairman, from farmers as well as from business men and women is that the frustration level has reached a peak.

I commend the efforts the present chairman has made, the gentleman from Pennsylvania [Mr. SHUSTER], in addressing many of these issues and many of these problems in his Clean Water Act. I thank him for the good job he is trying to do in trying to bring together many diverging points of view. However, in the final analysis, I submit that it comes down to one thing and one thing only in mind. And that is, does this bill make our water cleaner or not?

On closer examination of this bill, Mr. Chairman, I am compelled to oppose the bill and to support the substitute. Our Nation's rivers, lakes and coastal waters have become cleaner and more fishable and swimmable since the enactment of the Clean Water Act in 1972. That is 23 years of progress toward a better environment for our future, our children's future.

I have heard time and again from my colleagues on the other side of the aisle that we must fight to reduce the budget deficit so that we do not place a financial burden on our children's future or, as it has been commonly coined, so that we do not mortgage our children's future. I think it is equally important to leave a world that is environmentally secure so that we do not give away our children's future.

I think that is imperative. It is imperative that we fix the provisions of this act that have not worked well, but that does not mean reducing standards that have made our waters cleaner. The Saxton-Boehlert-Roemer substitute amendment takes this approach. This substitute is a reasoned approach, fixing the Clean Water Act. It addresses the wetlands issue without putting real wetlands at risk. It is silent on the issue of risk assessment, cost-benefit analysis, contrary to what some of my colleagues would have you believe.

99-059 O—97 Vol. 141 (Pt. 9) 19

It allows more input at the State and local level regarding decisions on development of wetlands. The substitute provides more flexibility for States under the Coastal Zone Management Act. The substitute would not take away standards needed to keep our fisheries and oyster beds in good health, and it reduces the loopholes and exemptions that allow the release of pollutants into our waterways. There would be a 10-year moratorium on the implementation of any new storm water requirements on smaller communities and light industry, and it provides the much-needed funds to farmers and others who are working hard to control nonpoint source pollution.

Mr. Chairman, in light of all the circumstances surrounding this substitute, I simply wanted to urge a vote for this moderate and what I believe to be a well-reasoned approach, safeguarding our Nation's waterways. A vote for the Saxton-Boehlert-Roemer substitute to H.R. 961 is a vote for safeguarding the clean water of our children, the children who deserve a clean future.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. TUCKER. I yield to the gentleman from New Jersey.

Mr. SAXTON. I would just like to commend the gentleman on his very thoughtful and fine statement and we appreciate very much the gentleman's support.

I would just say to the gentleman that he has correctly pointed out, just as we owe our children a legacy in terms of the finances and the way we spend our money today and the way we borrow our money today, we certainly owe our children a legacy in terms of the world and the physical condition that we leave it. I appreciate very much the support of the gentleman.

Mr. GILCHREST. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the alternative. I want to make some comments, first, about wetlands. We cannot preserve clean water. We cannot have fish, we cannot preserve waterfowl and we cannot limit flooding unless we have wetlands. I know the controversy about which wetlands to regulate and which wetlands not to regulate. But if the bill goes through the way it is, we will not have any wetlands to regulate.

□ 1700

Mr. Chairman, there are serious flaws in the lack of science, or the complete absence of science, in the evaluation on how to delineate a wetland. People have been talking about the loss of value to people's property. If we will look at this in a broad sense, the vast majority of people in the United States will have their property value increased as a result of a carefully crafted, well-managed wetlands program. I do not know whose property value would be diminished if we continue to have wetlands.

If Members will look at this map, this is the State of Maryland up here, and this is the Chesapeake Bay. The value of wetlands to the Chesapeake Bay and its watershed in this region that we see on the map is in the billions of dollars. What the wetlands do, they filter out pollution, they limit flooding, they provide habitat for waterfowl, they do a whole host of things that increase the value of people's property in the region of the Chesapeake Bay.

I want Members to look at something. I am going to turn the map upside down. This, as we notice, is the Chesapeake Bay. Here we are in Washington, DC, and this is the Potomac River. We have a lot of development around Washington, DC, and there is much limited development in these other areas, which means they soak up the nutrients, the toxins, the silt that the rain normally washes into the water. We can see we do not have that protection around Washington, DC.

If we look down here in Richmond, VA, nothing against these great communities, if we look in the vicinity of Richmond, VA, we also see the lack of protection, because of the lack of wetlands, and we see the silt going into the water.

Mr. Chairman, I am going to turn the map upside down. I want Members to imagine that this is a root that goes up to the trunk of a tree. When we have a root in the ground, the root absorbs nutrients. It absorbs anything that is in the ground, whether it is water, whether it is water inundated with nutrients, a whole variety of things.

If there is a tree in a wetland, this tree is going to absorb those nutrients before they go anywhere else, and preserve the quality of water where the tree happens to stand, and it could be a forested wetland, or it could be a wetland. If this is a tree, these nutrients that you see pouring into the Chesapeake Bay would not pour into the Chesapeake Bay. This diminishes, right now, because they are not being absorbed, the value of the Chesapeake Bay, and reduces its productivity.

One other comment I want to make about the bill. That is the pure lack of science that is in the delineation criteria for what is a wetland. Right now in the bill, in order for an area to be considered a wetland, it has to be saturated at the surface, that means water ponded on the surface for 21 consecutive days during the growing season, and it has to have hydric soil, and it has to have the wettest of obligate vegetation. That is like a cattail.

In this picture, this area is wet for 21 consecutive days during the growing season, it has hydric soil, but it does not have the third criteria which meets

the provisions of the bill to be a wetland, obligate plant species. If that is not a wetland, even if that is wet for 40 days during the growing season, if it does not have that third criteria, it is not a wetland.

There is one other comment that I think is worth mentioning. This is a pond in Nebraska. This pond in Nebraska, and I will show it to the other side, in case they cannot see it there, this is a pond in Nebraska. What it does, it offers habitat for migrating waterfowl. This is not always wet for 21 consecutive days during the growing season, or has obligate wetland species. It has hydric soil. It could be, unfortunately, wet for 20 days during the growing season, 20 days right after the growing season, and even if it had the obligate wetland species, still would not be classified as a wetland.

When we are traveling long distances if we are going on a trip with the family, you have to stop some places. My kids like McDonald's and I like diners, but we generally have to stop to consume a little refreshment. If we lose these wetlands, we lose an awful lot of value to property, we lose a lot of value to this Nation.

The CHAIRMAN. the time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. SHUSTER and by unanimous consent, Mr. GILCHREST was allowed to proceed for 2 additional minutes.)

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Chairman, I would ask the gentleman, is it true that under our bill, Maryland and Nebraska, the two examples the gentleman used, would be totally free to designate the two examples he gives as a wetland and regulate them as a wetland.

Mr. GILCHREST. Reclaiming my time, Mr. Chairman, it is my understanding that the States go by that. Since wetlands are regulated as waters of the United States, and they come under the Federal jurisdiction, the wetland delineation criteria is also used by the State.

Mr. SHUSTER. Mr. Chairman, I would respond to my friend that the law is very clear, and the technical staff tells me that in these examples, the State of Maryland or the State of New Jersey could regulate that land as a wetland under State regulations.

Mr. GILCHREST. Reclaiming my time, Mr. Chairman, even if that is true——

Mr. SHUSTER. It is.

Mr. GILCHREST. As the greatest legislative body in the world, which is the U.S. Congress, I think we should use the best scientific evidence available to determine the delineation criteria for a wetland, which is not the case in this bill now, and once we know the science, which is available to use now, we can make the policy. However, I think we are making policy in the absence of information.

Mr. SHUSTER. If the gentleman will yield further, I would say to my friend what may well be good for Maryland, what Maryland under this bill is totally free to do, may not be good for Arizona or Utah. That is the very reason we say let the States make these decisions. I thank the gentleman.

Mr. GILCHREST. Mr. Chairman, I think the States should have the information that the National Academy of Sciences has to offer to us as Congress.

The CHAIRMAN. The time for the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. SAXTON and by unanimous consent, Mr. GILCHREST was allowed to proceed for 1 additional minute.)

Mr. GILCHREST. Mr. Chairman, I would like to make one other comment on the compensation criteria, which people say is absent in this bill. We already passed a law to compensate landowners for wetlands and for the Endangered Species Act, so putting it into the Clean Water Act I think is totally unnecessary.

I do want to make a comment about compensation and the Fifth Amendment property rights. If your property is taken away for the public good, you are to be compensated. Everybody endorses that. However, if your property is, in my judgment, reasonably regulated to prevent pollution of your neighbor's property or to prevent public harm, compensation in this area is a whole other different story. Should we compensate people to prevent them from polluting? I do not think we should.

Mr. ROEMER. Mr. Chairman, will the gentleman yield on that point?

Mr. GILCHREST. I yield to the gentleman from Indiana.

Mr. ROEMER. I just want to clarify the position of many people who support the substitute, Mr. Chairman. First of all, on risk assessment, if the President signs the legislation, and the Senate passes that, I voted for this legislation that would apply to this bill, as the same with takings. Therefore, just because we do not put every new thing in there——

The CHAIRMAN. The time of the gentleman from Maryland [Mr. GILCHREST] has expired.

(At the request of Mr. ROEMER and by unanimous consent, Mr. GILCHREST was allowed to proceed for 1 additional minute.)

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, it is the strong position of many people who support this substitute that we support such ideas as cost-benefit analysis, risk assessments, and the takings. I was one of the 72 Democrats who voted for that legislation. I hope if those two pieces of legislation pass this body, that we apply both pieces of legislation to this bill and to this substitute, if it passes.

However, to hear other people argue on the floor of the House of Representatives that we have to attach this stuff to every single bill that comes through here would make the case, illogical as it might be, that we have to put the Balanced Budget amendment on every single piece of legislation that goes through here. That is simply not true. Many of us support those ideas and those reforms. I thank the gentleman.

Mr. GILCHREST. I thank the gentleman for his comments, and I urge a vote on the Saxton substitute.

Mr. FILNER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support for the Boehlert-Saxton-Roemer substitute. This better, safer alternative represents a moderate, commonsense and bi-partisan—quite frankly, an above party—approach to cleaning up our rivers, lakes and beaches without turning our back on the health and safety of Americans—and it insures that my constituents in San Diego will not have to spend billions to build an unnecessary sewage plant.

Fortunately from a purely parochial viewpoint both H.R. 961 and this safer alternative provide regulatory relief for San Diego and recognizes that our current sewage treatment system adequately protects our ocean. Let me repeat, this means that both bills would remove the requirement that would force San Diego to waste billions of dollars to modify our sewage treatment system.

But with Dan Diego assured of regulatory relief and the savings of billions of dollars, we must also be sure that our drinking water is protected, and that we can fish and swim in San Diego's rivers, lakes and beaches.

Unfortunately, H.R. 961 will radically change the Nation's laws that protect our beaches and drinking water.

H.R. 961 would increase the dangers of pesticides and chemical contamination of our drinking water—imposing higher costs to clean up our drinking water or forcing all of us to buy bottled water. It would let large agribusiness and industrial polluters off the hook from preventing the contamination of our drinking water—and it would pass those costs along to all San Diegans. That is right, we consumers will pay more to protect a few special interests.

San Diego gets its drinking water from the Colorado River. Many smaller cities from four States dump their treated sewage into the Colorado River, and before this water gets to San Diego, it must go through one of the largest agricultural areas in the

country. Unlike the safer alternative, H.R. 961 would allow these cities and large agribusiness corporations to flood chemicals and other pollutants—at will—into our drinking water supply.

H.R. 961 also threatens our economy and our health. It includes the repeal of a section of the Coastal Zone Management Act—which will eliminate current protections for our beaches. How can we attract tourism if visitors cannot swim in our beaches? San Diego's beaches are already closed too often. Is this really the time to get rid of the very protections that help to keep the beaches safe for our families?

The safer alternative would not repeal the Coastal Zone Management Act program that protects our beaches. In fact, the substitute has adopted the language drafted by the Coastal States Organization, which represents the Governors of our Nation's coastal States, and continues to protect our beaches—for our children's health and for our economic health.

There are three critical questions that on behalf of San Diegans, I must ask about these bills: First, will we have clean water to drink? second, will we have a clean beach to swim at? and, third, will we get relief from the multibillion dollar secondary treatment boondoggle?

With the safer alternative the answers are: Yes to safe drinking water, yes to clean beaches, and yes to relief from higher sewage taxes.

Without the safer alternative the answers are no, no, and yes.

San Diego will get the regulatory relief it needs in either bill. But I cannot in good conscience support H.R. 961—a bill that purports to help San Diego on the one hand, but destroys the safety of our drinking water and beaches on the other.

San Diegans are asking three important questions. Let's not get one out of three right. Support the Boehlert-Saxton-Roemer substitute "Safer Alternative" and answer "yes" to all three.

Mrs. LOWEY. Mr. Chairman, will the gentleman yield?

Mr. FILNER. I yield to the gentlewoman from New York.

Mrs. LOWEY. Mr. Chairman, first it was school lunches, student loans, and Medicare. Now the Republican leadership has trained its sights on clean water.

As cochair of the Long Island Sound Caucus, I rise to support the Saxton-Boehlert-Roemer substitute. Unlike H.R. 961's sweeping, 326-page rollback of one our most effective environmental laws, the substitute recognizes that the battle for clean water has not yet been won.

Unlike H.R. 961, this proposal will not be a boon for polluters, and penalize anyone who bathes, swims, fishes, boats, or recreates in lakes, rivers, and oceans. Unlike H.R. 961, this substitute recognizes that if you allow polluters upstream to discharge more pollutants into the water—as H.R. 961 does—it's the people downstream who will ultimately get saddled with the bill to clean up the pollution.

As my constituents who live near Long Island Sound and the Hudson River know, all is not well with our rivers and bays. More than half of New York's rivers and 85 percent of its estuaries are closed to activities such as fishing and swimming at some time during the year. According to the most recent statistics available, New York's ocean beaches were closed completely on 93 occasions and more than 700 advisories were issued against swimming. More than 400 fishing advisories were issued to protect the public from ingesting contaminated fish.

In New York and Connecticut, business, labor, and environmental groups have set aside old disagreements and joined together in developing—with the aid of the EPA—a plan to clean up Long Island Sound. None of this would have been possible without the underpinning of the Clean Water Act, and now is certainly not the time to pull the rug out from under their feet. If H.R. 961 is enacted, it will only cause more delay and more expense to move forward with environmental clean-up in my region.

The vast majority of New York's water quality problems are caused by nonpoint pollution—from sources other than factory or sewage discharges. And yet H.R. 961 repeals the only Federal program that can reduce nonpoint pollution. In fact, two-thirds of coastal States have invested millions of dollars over the past 4 years crafting runoff control programs that are nearly ready for approval under the auspices of the Clean Water Act. In keeping with the wishes of the coastal States themselves, the substitute preserves this important program.

The substitute also removes some of H.R. 961's more egregious rollbacks of environmental protection.

Across the Nation, swimming and fishing are not available to millions of Americans because of pollution that runs into waterways every time it rains. In fact, more than one-third of all our Nation's water quality impairment is the result of stormwater discharge. Yet, H.R. 961 repeals the entire EPA stormwater permitting system, thereby ending all monitoring and enforceable requirements for the 342 cities and 134,000 industrial facilities that currently have stormwater discharge permits. Thankfully, the substitute preserves the act's stormwater permitting program, while providing a 10-year moratorium on any new requirements for cities under 100,000 or small industries.

The substitute also repeals 961's disastrous wetlands classification system—adopting the National Governors Association's reasonable wetlands proposal instead.

Now is not the time to relax our efforts to ensure clean water. Estuaries like Long Island Sound—a $6 billion-a-year resource for the entire region's fishing, boating, and recreation industries—are at stake. I urge my colleagues to support the Boehlert-Saxton-Roemer substitute. Let's not turn back the clock.

The CHAIRMAN. The time of the gentleman from California [Mr. FILNER] has expired.

Mrs. LOWEY. Mr. Chairman, I ask unanimous consent that the gentleman may have an additional 5 minutes.

The CHAIRMAN. The gentlewoman can seek her own time in due course. There are Members of the committee who have not had an opportunity to speak.

Mr. FILNER. Mr. Chairman, I ask unanimous consent to proceed for an additional 2 minutes.

Mr. SHUSTER. Mr. Chairman, I am constrained to object. There are Members of the committee who have not had a chance to speak yet.

The CHAIRMAN. The gentleman is correct. The Chair traditionally recognizes 1- or 2-minute extensions of time, with unanimous consent.

Mrs. LOWEY. Mr. Chairman, I ask unanimous consent to revise and extend my remarks.

The CHAIRMAN. Is there objection to the request of the gentlewoman from new York?

There was no objection.

Mr. EMERSON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, debate here in the House of Representatives lends itself to some interesting concepts. I must say to my dear friend, the gentleman from Maryland [Mr. GILCHREST], that I have never quite thought of the Chesapeake Bay as a tree. However, now I am getting that concept into my head, and I want to respond simply by saying that I think the answer of the chairman of the committee was an appropriate one.

H.R. 961 is a good bill, and it will be a good law for the whole country. If individual States want to exact a higher standard, in accordance with the process that are available to them from State to State to State, they are at liberty to adopt that.

However, I rise in very strong opposition to the substitute.

□ 1715

For some reason proponents are billing this measure as 75 percent H.R. 961, as though that percentage justifies the substitute. Come on. The substitute guts the bill, and there is a big difference between the bill and the substitute.

The substitute fails to address any of the major themes of H.R. 961 dealing with regulatory reform, unfunded mandates relief, risk assessment, cost-benefit analysis, protection regarding private property takings, allowing States to demonstrate their ability in finding solutions to water quality issues, and wetlands policy. Instead, the substitute retains the current top-down, the "bureaucracy knows best" approach to solving the country's remaining water quality problems.

The Clean Water Amendments of 1995 provide for voluntary incentive-based

programs in local, State, and Federal partnership to advance clean water goals with nonpoint source pollution. The substitute does not.

It also gives State and local officials the flexibility to manage and control stormwater like other forms of runoff, which helps reduce the high cost of unfunded mandates. The substitute does not.

Finally, it requires the Environmental Protection Agency to subject its mandates and regulations to risk assessment and cost-benefit analysis, and the substitute does not.

For the first time in a long time, we are successfully working together at all levels of government to meet our water quality needs. We do not need straitjackets to have clean drinking water, nor should we allow the Federal bureaucracy who knows the least about forming or operating a small business to deem what is a wetland from their Washington offices.

Through its increased flexibility, the Clean Water Amendments of 1995 benefits citizens, farmers, businesses, consumers, local and State governments, and the taxpayers.

Mr. Chairman, these last-minute attempts to derail and weaken this strong bipartisan effort, whether they are in the form of amendments or so-called substitutes, should be voted down. Such efforts, in my view, are a breach of faith with the changes the American people demand. They renege on the need for smart regulation, good science, cost-effective risk reduction, and common sense.

The Washington bureaucracy and the professional environmental elitists have been ramming these edicts down the throat of the American taxpayer for far too long. It is time for citizens to have a say in the process. I am delighted that in this bill we have provided for that forum, for a citizen voice. Vote for the Clean Water Amendments of 1995 and against the Boehlert-Roemer substitute.

Mr. MENENDEZ. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Boehlert substitute.

The proposed clean water amendments, H.R. 961, amount in my mind to nothing less than environmental sacrilege. The underlying principle behind the bill seems to be pollute now and leave a debased environment for our children. They take us back 20 years to an environmental stone age.

H.R. 961 would have a severe and negative impact on New Jersey and the 13th Congressional District in particular. The EPA 1992 toxic inventory shows release of toxic material into New Jersey surface water of more than 400,000 pounds. The current law would be modified by H.R. 961 to allow for downgrading water quality standards where they result in disproportionate costs over benefits.

This is unfair to the more than 90 percent of major industrial facilities and municipal facilities that are in compliance with the Clean Water Act in New Jersey. It rewards those who have resisted investing in pollution cleanup measures and punishes those who were responsible corporate citizens.

The State of New Jersey has a thriving tourism industry doing over $10 billion in business annually. The State has engaged in aggressive fish consumption and beachwater quality monitoring. Under H.R. 961, EPA is now directed to issue guidance instead of regulation with regard to fish consumption advisories and monitoring beachwater quality.

Nonpoint source pollution is responsible for roughly half of the remaining pollution in the country. H.R. 961 modifies current law to clarify that voluntary or incentive-based approaches are allowable in lieu of regulatory programs. It also repeals sections of the Coastal Zone Management Act which requires coastal States to develop nonpoint source control programs. This would hit New Jersey's coastal tourism industries and port activities very hard, since they are at the receiving end of newly degraded waters.

Simply put, H.R. 961 sets the clock back more than 20 years.

The bill pushes back deadlines, requires waivers, creates huge new exemptions and mandates major changes in the core of the program, the water quality standards, and permit conditions.

This is a piece of legislation that has been the most successful pollution cleanup program in existence.

However, H.R. 961 does also the following: It waives industrial pretreatment of waste; delays dates for meeting deadlines if Federal funding falls short of the authorized levels; severely limits EPA's ability to control dangerous toxic substances; removes thousands of acres of wetlands from Federal protection, which could lead to more flooding, lower fish catches and poorer water quality.

We have talked about the Coastal Zone Management Act. It also eliminates the ban on building sewage treatment plants in flood plains and wetlands and thereby encourages sewage overflow; and it puts it on a deadline for the control of agricultural runoff, to the detriment of downstream users.

There are provisions in this bill that no one is quite sure what is meant. The antibacksliding provisions, which are supposed to ensure that permit changes do not result in different kinds of water pollution, are virtually, in my mind, incomprehensible. The provision for trading point source pollution credits between air and water may not be a bad idea, but it is completely unclear how it is supposed to work or how it will affect downstream users.

That was before the markup. Now it is worse.

There is a wholesale exemption for livestock feeder operations, no matter how large. It is a total exemption for an entire industry to dump animal waste into lagoons, retention ponds, wetlands, and other waters of the United States without a permit. This is the exact source of the deadly cryptosporidium contamination which killed so many people in Wisconsin.

Current law lists 5 nonconventional pollutants for which a discharger may seek a modification of the best available standards of treatment. This bill goes from 5,000 to 70,000 different listings.

There are terms which go beyond vague. Pollution credit trading, statistical compliance, and innovative technologies are frequent additions to provide flexibility which are in reality techno-babble for loopholes.

This bill is a great leap backward in the control of water pollution. It is government by anecdote. If a special interest group wanted a small change in the law, it was generally granted at the expense of the environment. The result is a bill which has numerous contradictory provisions and repeals many longstanding commitments to water quality.

It is not the type of legacy we want to bequeath to our children, the next generation, as we approach a new century.

I urge support of the substitute and defeat of the legislation.

Mr. WELLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of H.R. 961 and oppose the Boehlert substitute. Everyone here today supports clean water, and H.R. 961 works to keep our water clean.

Chairman SHUSTER has done yeoman's work in bringing together all sides in a compromise fashion, and has earned overwhelming bipartisan support from Republicans and Democrats in committee with an overwhelming 46 to 16 vote when this legislation passed the committee.

It has also earned bipartisan support from State and local officials. Let me list them once again. This is a list of some of the public sector groups that have endorsed H.R. 961:

The National Governors Association, a bipartisan group; the National League of Cities, a bipartisan group Association of State and Interstate Water Pollution Control Administrators, a bipartisan group; American Public Works Association, a bipartisan group; Association of Metropolitan Sewage Agencies, a bipartisan group; Association of Metropolitan Water Agencies, a bipartisan group.

In fact, I have with me a letter that the President of the Association of State and Interstate Water Pollution

Control Administrators sent to the committee, highlighting the many major improvements the States have repeatedly asked for and requested. Finally they were included in H.R. 961.

I would like to quickly list those 12 items that the committee has agreed to help State and locals by including. In fact, the letter says that while the States have repeatedly requested from Congress and that by working together they believe that considerable strides have been made to more efficiently and effectively deliver environmental results.

With its new comprehensive approaches,

and I am quoting this letter,

to non-point source, watershed and stormwater management, H.R. 961 sets forth a framework that better protects this Nation's waterways.

They have listed below provisions which are consistent with the goals of States and this association has asked for in a bipartisan fashion. According to the Association of State and Interstate Water Pollution Control Administrators, H.R. 961 clearly anticipates an enhanced State management role relative to clean water program implementation.

H.R. 961 maintains a firm commitment to the Clean Water Act's goals, with more flexibility at State and local levels to determine how they can be best achieved.

The letter also says that H.R. 961 establishes a national program to bring nonpoint source pollution under control, which provides a comprehensive rather than site-specific demonstration program, an unambiguous goal to meet water quality standards within a specified deadline, increased program funding to assist States with expanded implementation activities.

The fourth point they make in their letter says that H.R. 961 enables States to focus scarce resources on priority problems by providing 10-year permits, control strategies that consider the relative contributions of both point and nonpoint sources, the incorporation and active promotion of pollution prevention, and continued State certification authority under section 401 over hydropower facilities.

The letter also points out that H.R. 961 establishes a comprehensive framework to address stormwater runoff that goes beyond the limited number of sources covered by current law and addresses the multitude of stormwater problems, sets an unambiguous goal to comply with water quality standards within a specified deadline, and gives State flexibility to tailor solutions to local circumstances.

H.R. 961, according to this letter, encourages States to take the watershed approach to problem solving and consolidate planning and reporting requirements. H.R. 961 also, according to the letter, increases authorized funding for State implementation under section 106 in a State revolving loan fund.

H.R. 961 also streamlines SRF requirements to assure the construction of more projects at less cost. H.R. 961 addresses the special needs of small and hardship communities, and H.R. 961 codifies a consensus agreement of the States, the cities, and the U.S. EPA on combined sewer overflows.

H.R. 961 clarifies that as coregulators, States' consultations with U.S. EPA are not subject to the Federal Advisory Committee Act. Last, this letter points out that H.R. 961 requires Federal facilities to comply with the law to the same extent as other dischargers.

Mr. Chairman, H.R. 961 is a product of discussions with local and State officials, those who are responsible for administering and living with the Clean Water Act. For the first time, we have legislation——

The CHAIRMAN. The time of the gentleman from Illinois [Mr. WELLER] has expired.

(By unanimous consent, Mr. WELLER was allowed to proceed for an additional 30 seconds.)

Mr. WELLER. Mr. Chairman, this legislation is a bipartisan effort. H.R. 961 passed the committee with a vote of 46 to 16, clearly overwhelming bipartisan support.

I urge Members of the House to support the committee, vote for H.R. 961, and reject the substitute.

□ 1730

Mr. WISE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I yield to the gentleman from Indiana [Mr. ROEMER].

Mr. ROEMER. I thank the distinguished gentleman for yielding.

Mr. Chairman, I just want to say there are many Governors and State legislators in favor of this substitute. The National Governors' Association wrote, "We believe the provisions on wetlands in H.R. 961 are inconsistent with the Governors' wetlands policy in several important respects."

The National Conference of State Legislators, "We could not support the bill unless a number of important revisions are made."

Finally, the South Carolina Department of Health and Environmental Control on coastal nonpoint programs, "Significantly changing this portion at this time would not only waste taxpayer money, but would send the wrong message."

I think that is just some quotes from a number of States' legislators that support the substitute. And I thank the gentleman.

Mr. WISE. Reclaiming my time, Mr. Chairman, I rise in support of the substitute. It is not all I would want it to be, but then none of this legislation is, to be honest with you, and somewhere between this bill and the present law that we are operating under is the perfect solution.

But let me just make a couple of notes. I come from an industrial area, and so I do not look with total alarm at some of the changes that the gentleman from Pennsylvania [Mr. SHUSTER] and committee have brought, and in fact I think there is a need for some flexibility dealing with the emissions requirements, because I point out that many of our industries have made significant investment and have complied with cleanup requirements, and often what we are finding is in meeting the final 10 percent of cleanup that you have is that it can be far more expensive then the previous 90 percent, and that some flexibility should be allowed.

The current Clean Water Act has reduced large amounts of point source pollution. Now we must look at how we can make sure that we continue that effort. While having done a lot of good, the remaining problems become more specialized, they become harder to fix with rigid one-size-fits-all solutions. The point source provisions of H.R. 961 do attempt to tap some of that creativity.

I have some concern, Mr. Chairman, about the current system of command-and-control regulation, and I think probably in some cases they have gone about as far as they can in making major gains for the environment.

For instance, Mr. Chairman, I look at the H.R. 961 section 301, subsection (q), which for instance permits the Administrator to authorize States to modify or permit requirements if pollution prevention pressures or practices will result in greater overall reduction than would otherwise be achievable under the existing command-and-control regime. This would seem to make sense. Pollution trading, which there are provisions of that in the existing Clean Air Act, also I think is something that should be looked at. The President's own reinventing environmental regulation initiative clause on the effluent trading program similar to this one is a cost-effective approach for reducing water pollution. So I think we should not be afraid of some flexibility.

But the reason I am supporting this substitute, Mr. Chairman, is about other areas as well, wetlands for instance. I hold a candle to no one being frustrated by wetlands bureaucrats. They make honest and responsible landowners be in fear of cattails that might suddenly spring up, but at some time I believe Congress should make decisions based on science. It should look at the fact it chartered to study by the National Science Academy a few years ago designed to help shed some light on this subject, and we have the results of that study, and yet we are racing ahead with the legislation.

I too believe that you ought to eliminate most of the agencies that are involved in wetlands disputes, it ought not to be some kind of lottery that you go through: Did you satisfy Fish and

Wildlife, did you satisfy Interior, did you satisfy this, and just when you think you have gotten to the end of the obstacle course, whoops, up pops another agency.

But by the same token, I am not sure we ought to be putting into legislation the kind of scientific standards or hoped to be scientific standards that are here.

I so I have great concern about that. And I also have concern about attaching the risk assessment provisions to this legislation.

Mr. Chairman, there is a reason that many of the people in this Chamber today are drinking bottled water out of the offices. There is a reason that bottled water has become one of fastest-growing industries in the country. There is a reason when I go to the grocery store I am now seeing whole shelves of bottled water. For some reason, I do not know whether I was ignorant or not, I used to turn the tap on and now worry. Now I worry. So it seems to me that this Congress ought to be taking a little more time being a little more reflective before it passes the law of the forest, and for that reason I support the substitute, and would urge my colleagues to do the same.

(Mr. SHUSTER asked and was given permission to speak out of order for 1 minute.)

TRIBUTE TO DUKE CUNNINGHAM, FIRST ACE OF THE VIETNAM WAR

Mr. SHUSTER. Mr. Chairman, I would like to inform the body that at precisely this moment, 5:35, 23 years ago today, our colleague, Congressman "DUKE" CUNNINGHAM became the first ace of the Vietnam war, was attacked by 22 MiG's, shot down 3 MiG's then was shot down himself, and as he was ejected and was about to be captured, a Marine helicopter swooped in, rescued him. And so on this anniversary of that momentous occasion I think we all want to join in saluting the first ace of the Vietnam war, our colleague, Congressman "DUKE" CUNNINGHAM.

Mr. LATHAM. Mr. Chairman I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to this substitute amendment, and let me begin by saying that I have the highest respect for the distinguished gentleman offering this amendment, and I admire their commitment to clean water. But having said that, I believe there are at least two fundamental flaws to the substitute amendment.

First, as it stands, H.R. 961 provides individuals flexibilities for individual States to implement storm water programs, watershed management programs, and provides commonsense relief to small and rural communities.

The substitute does not include crucial regulatory reform provisions that this House has already overwhelmingly approved in principle, the ideas of risk assessment, cost-benefit analysis, and ending unfunded Federal mandates.

Under the substitute, it will be harder for States to regulate smarter in order to provide more pollution prevention at a far less cost.

Second, I must oppose the substitute amendment because it does not take critical steps towards fairness that are in H.R. 961. No subject arouses more passionate opposition in my district than the excesses of the Federal wetlands programs administered under the Clean Water Act.

H.R. 961 includes commonsense classification and delineation criteria for wetlands that reflect the genuine differences in quality and utility of wetlands.

I would just like to tell a little bit about the State of Iowa. In Iowa we have 25 percent of the grade A farmland in the world, not just in the United States, but in the world. And if the requirements that are in this substitute amendment were in place in 1993 when we had the floods in the Midwest, that grade A farmland could be determined to be a permanent wetland. It is not enough today that farmers have to fight weather problems and fight the markets, but now they have a threat from the Government itself coming in and taking over their land and telling them how they can use their land. And you talk about property values. What more would reduce the value of agricultural crop land than to determine that to be a permanent wetland?

Also, much of the land that I am referring to has been in families like my own for well over 100 years. They have had to put some tile in, much of it was hand dug by our ancestors, 80, 90 years ago, and today because of these requirements you can no longer improve or repair those tile lines, because again of the bureaucrats.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. LATHAM. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I want to make it absolutely clear that the alternative permits repair of tiles on agricultural land. Our alternative does permit that.

Mr. LATHAM. Reclaiming my time, but you also talk about delineation of what is a wetland, and today under this substitute those wetlands can be defined as a permanent wetland, any pothole out there that a duck would not land in under this substitute can be classified as a wetland.

I really resent the idea too that somehow farmers are not conservationists, are not environmentalists. I tell you on our land, on our farm, we are the ones who have to make a living off of that land. We are the ones who are raising families who drink that water. And anyone who has the idea that a farmer is not concerned about the quality of life and the preservation of that land and also seeing to it that that water is purified is simply wrong and has no idea of what agriculture is about today or about what a family farm is about. And once again, people who think we are out there trying to pollute the environment simply do not understand reality.

Earlier someone tried to blame what happened in Milwaukee on a farmer. And the fact of the matter is, and it has been shown that that was wildlife that put that bacteria in the river, and if anyone thinks that a new Federal mandate or regulation is going to control wildlife out here again they certainly do not understand what is outside of the Beltway here in Washington.

This debate, folks, is about Washington regulators against the farm families, the small business people, and the local governments in America. H.R. 961 reflects the interests of the farm families and the small business people and the local governments, and the substitute represents the idea of the regulators, and I ask Members to vote no on the substitute and support H.R. 961.

Mr. CLYBURN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in favor of the substitute bill being offered by my colleagues, Mr. SAXTON, Mr. ROEMER, and Mr. BOEHLERT. During the lengthy committee markup of H.R. 961, I listened closely to my colleagues on both sides of the aisle as they delivered thoughtful opinions on every aspect of this complex legislation. In the end, I voted not to report H.R. 961 out of committee.

Mr. Chairman, my vote against H.R. 961 is not a vote against clean water. In fact, it is very much the opposite. My vote against H.R. 961 is a vote for clean water, for good health, and for an adequate level of environmental protection. I believe the Saxton-Roemer-Boehlert substitute is a sensible solution that can provide us with all of those things.

In my State of South Carolina, many programs under the current act are administered by the South Carolina Department of Health and Environmental Control—DHEC.

On yesterday, I was contacted by DHEC and they expressed to me they would rather have no change than the damaging changes found in H.R. 961. Now when the agency that was created to protect the health and environment of the people oppose a bill, that should cause us all to wonder about the ramifications of it.

The comments made by DHEC are not unfounded. Let me tell you why.

Throughout the debate on clean water in both this Congress and the last, we have heard what some call tales about people who catch their evening meals in the streams behind their homes, or our of the rivers that run through their communities. Let me

assure you that these are not just fish tales.

Mr. Chairman, this is a reality, especially in rural districts such as the one I proudly serve in South Carolina. Over 48 States have issued over 1,300 fish advisories for recreational and subsistence anglers. As of 1994 in South Carolina, there were 18 fish advisories in effect. That is up from only three in 1992. Do the math anyway you like, but the sum adds up to there is more that needs to be done.

The provisions in the substitute bill would keep these waters clean and allow these people to keep fishing in the waters, and their children to keep playing in the waters without the hazards they could encounter if H.R. 961 were to be put in place. Among other harmful changes, H.R. 961 would allow water quality standards to be relaxed for up to 70,000 pollutants.

I don't know about you, Mr. Chairman, but I feel that is 70,000 more pollutants than the people of the Sixth Congressional District of South Carolina need to be exposed to.

I imagine if I asked for a show of hands of those Members who have visited the South Carolina coast, there would be quite a few.

Our State is one of 35 that belong to the Coastal States Organization. This is yet another reason to support this substitute because it contains provisions developed by the Coastal States Organization that are intended to protect these fragile coastal areas from runoff pollution.

The coastal lands need special provisions. The Saxton-Roemer-Boehlert substitute would give these special protections as developed by the Coastal States Organization, and allow for continued responsible use of our coastal areas.

Mr. Chairman, it is no doubt that people all across the country know the value of clean water. In a recent Times-Mirror poll, 76 percent of Americans said they felt we should do more, not less to protect our Nation's waters. However, no one knows the value of clean water as much as the residents of rural communities across America. There is a term we like to use today—"Environmental Justice."

I don't care what you call it, but the concept remains the same. People living in small, mostly rural and poorer communities across America consistently suffer from more health problems due to environmental negligence. It is for those people that I rise today to support the Saxton-Roemer-Boehlert substitute.

Mr. Chairman, I would like to say a few words about the markup of H.R. 961 in the Transportation of Infrastructure Committee. I want my chairman, Mr. SHUSTER, to know that even though we ultimately came down on different sides on H.R. 961, I congratulate him on the job he did in presiding over the markup, and I appreciate the sincerity of his views.

And I want my ranking member, Mr. MINETA, to know how much I appreciate his leadership and commitment on this critical issue.

Mr. Chairman, in the South we tend to tell stories to make a point, or use cliches to describe things. In keeping with that tradition, I would like to share two old adages we should all heed. One is "if it ain't broke don't fix it," and the other is "if you mess it up, clean it up." Mr. Chairman, this is the underlying message behind the substitute legislation being offered today, and I encourage all of my colleagues to joint with me in supporting clean water with a "yes" vote on the Saxton-Roemer-Boehlert substitute.

□ 1745

Mr. LoBIONDO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the substitute and commend my colleagues for their fine work on this bill.

As a strong supporter or regulatory reform, I was proud to vote for the regulatory reform proposals contained in the Contract With America.

And I rise today in the strong belief that indiscriminant regulation will sap our economic strength, our competitiveness and our future.

I believe that this substitute is consistent with regulatory reform.

First, most of the provisions of the substitute reflect the provisions in the chairman's bill. But, the substitute recognizes the importance of controlling stormwater runoff.

At the same time, the substitute provides States with flexibility in dealing with this problem. States would be able to target runoff control programs where they are needed most. And States would be given greater authority to use incentive-based programs and planning and management.

Similarly, the substitute would not overburden our small businesses and small municipalities with onerous regulations. They would fall under a 10-year moratorium on the implementation of new requirements under the stormwater management program.

Mr. Chairman, I represent a district that is surrounded on three sides by coastal waters. In our coastal areas in New Jersey, our businesses, indeed our economy, relies on having a clean coastal environment.

The family-owned hotels and motels in my district have approximately 3 months in the summer to earn their living for the year. If the beaches are closed because of pollution, those businesses are hurt and may not survive.

Mr. Chairman, commercial fishing is a $55 billion industry nationwide—and lets face it, people are not going to eat fish that they believe were caught in polluted waters.

In my district, nonpoint source pollution and storm water were major sources of ocean pollution. Actions taken at the State level have sharply reduced pollution in our ocean and bays. It is a testament to the commitment New Jersey has made, as a State, to protecting our coastal environment.

But we need a Federal standard. Our coastal waters do not recognize State boundaries. If New Jersey makes a commitment to prevent pollution from nonpoint sources and storm water runoff, that could be negated if another State does not.

Mr. Chairman, the substitute is a good bill.

Again, I commend my colleagues on a fine substitute and urge members on both sides of the aisle to support the Boehlert-Saxton-Roemer substitute.

Mr. DINGELL. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of the amendment. I commend the authors. I urge that the amendment be adopted. And I hope that in so doing, we will improve the bill.

I would inform my colleagues that the Clean Water Act is not only the most successful but it is the oldest of our major environmental statutes, and it was not passed by a bunch of left-wing kooks. It was passed overwhelmingly by bipartisan majorities on both sides of the aisle, and it came out of the Committee on Public Works overwhelmingly.

There is good reason for everything that is in the current law, and the wonderful fact is that it works.

What would the bill that is now before us do? First of all, in the State of Michigan, it would eliminate wetlands protection for some of our 5,583,000 acres of wetlands. Altogether, it would risk the potential loss of 3,629,000 acres.

The current law is a good law, but it does not do all that it should. In recent times, better than 10,000 beaches have been shut because of pollution of coastal waters, and better than one-third of our shellfish beds are at risk.

Now, what does the bill do here? First of all, it does not really protect wetlands as it should. As I mentioned, it puts Michigan wetlands and Michigan migratory waterfowl populations at risk. Indeed, I would warn my colleagues that this bill puts migratory waterfowl and migratory birds and migratory bird hunting at risk. I speak as a member of the Migratory Bird Commission which works to try and save the lands for these species.

The bill would go further than that. The bill would repeal the Coastal Zone Nonpoint Pollution Control Program. It would remove 60 percent of our Nation's wetlands from any protection, and allow total destruction of possibly as high as 80 percent. It would weaken the standards governing industrial pollution and discharges into lakes, rivers, and harbors. It would threaten the

Great Lakes fishery, which is worth better than $4 billion a year. It would hamper efforts to control nonpoint source pollution, the source of over 50 percent of water quality impairment in the United States, and it would create, interestingly enough, an extraordinarily unworkable bureaucracy which would supposedly address the question of wetlands protection within the Corps of Engineers, and cost the American people millions of dollars a year.

The amendment is a responsible piece of legislation. It accepts about 70 percent of the legislation written in the committee. It would make possible continued progress, albeit at a somewhat slower rate than we have seen, because of the programs which we are now addressing which have been, I repeat, enormously successful in terms of preserving natural resources and protecting the clean water and protecting the health of the American people.

Tourism is a great industry in this country, and it is one of the most important we have. I know of no one who will go to see dirty water. They go to see places where the water is clean, where the fishing is good, where the swimming is safe, and where one may eat the fish that they catch. They do not go to Gowanus Canal or to places which are fabled with their filth.

Legislation which we have before us would roll back in a startling fashion better than 40 years of progress which we have made in cleaning up the waters of the Nation. It would not help the polluters particularly. It would simply allow them to evade their responsibilities. It would not help the American people. It would simply inflict upon them continued destruction of their most precious and important natural resource, the water of this country.

The legislation which this country wants, if you ask the people, and better than 70 percent of them will say so if inquired of, is legislation which protects the waters, which protects the environment, which protects the health of the American people.

I would urge that the amendment sponsored by my colleagues, the gentleman from New Jersey [Mr. SAXTON], the gentleman from New York [Mr. BOEHLERT], and the gentleman from Indiana [Mr. ROEMER] be adopted. I would urge that my colleagues reject the bill.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I would like to make reference to some comments made by a colleague and member of the committee, the gentleman from Iowa [Mr. LATHAM], earlier, particularly as they apply to agriculture. I want everyone to know we are very sensitive to the needs of agriculture. Our alternative specifically provides exemptions for the repair and construction of tiles.

The CHAIRMAN. The time of the gentleman from Michigan [Mr. DINGELL] has expired.

(At the request of Mr. BOEHLERT and by unanimous consent, Mr. DINGELL was allowed to proceed for 2 additional minutes.)

Mr. BOEHLERT. Mr. Chairman, the exemptions specifically allow repair and construction of tiles. We also have in our substitute the same exemptions for agriculture as are contained in H.R. 961.

Mr. DINGELL. The gentleman says all this talk about how your substitute is going to hurt agriculture; it cannot, because it is the same language they have in the bill?

Mr. BOEHLERT. He was genuinely concerned about that. The concern was heartfelt.

Mr. DINGELL. I do not care whether it is heartfelt or not, I want to know if it is factual. I gather you are telling me some of the concerns expressed are not factual.

Mr. BOEHLERT. Some of the concerns expressed here have not been factual.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New Jersey.

Mr. SAXTON. The gentleman mentioned beach closures. I just want to say what the gentleman spoke of in terms of the Coastal Zone Management Act and the provisions that have to do with nonpoint source pollution and the benefits provided for wetlands go a long way to prevent beach closures.

In 1987 and 1988, I lived through those beach closures along with the Northeast coast, and I can say, I think uncategorically, that by repealing the laws which the committee bill proposes to repeal, that we are bound to repeat summers like those summers when we had those beach closures, because we are eliminating the protections that we have since put in place that have worked very, very well, and so I thank the gentleman for pointing out those very, very important aspects of this substitute.

Mr. DINGELL. I thank the gentleman.

Mr. DUNCAN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not take the entire 5 minutes, but I want to rise in strong support for H.R. 961 and urge that it be passed without major modification.

I would like to commend my outstanding chairman, the gentleman from Pennsylvania [Mr. SHUSTER], of the Transportation and Infrastructure Committee, for his outstanding and yeoman work that he has done in regard to this legislation. It is outstanding legislation, and it deserves the support of all of the Members of this body.

H.R. 961, as reported out of our committee, will reduce Federal power and will give us cleaner water. It gives control of water resource management to those who have the biggest stake in maintaining these resources, while taking control from bureaucrats here in Washington.

Even the Administrator of the EPA, Carol Browner, has said, "We must allow for flexibility, innovation and common sense as States and communities look for ways to achieve the standards." That is what the committee-approved bill does, Mr. Chairman. It restores common sense to our clean water regulation.

I have great respect for all of the authors of this substitute amendment. They are all good friends of mine. But I am afraid, Mr. Chairman, that the amendment in the nature of a substitute would eliminate the flexibility that is needed and that Ms. Browner called for, in that it seeks to retain Federal command and control in pursuit of clean water.

A one-size-fits-all approach to clean water regulation is no longer sound, if it ever was. The EPA bureaucrats and Army Corps of Engineers officials are simply not capable of making qualified, correct decisions for every State legislature, every city manager, every farmer, every land owner, every business owner in the Nation.

H.R. 961, as reported, lifts that responsibility from them and gives it back to the people and their representatives at the local level.

I do not need to repeat, Mr. Chairman, and would not have time to do so anyway, all the horror stories about EPA and Army Corps of Engineers regulations under our clean water laws at this time, one stupid, expensive, unfair decision after another.

A few years ago one of the officials of the National Association of Home Builders told me that if our wetlands laws were strictly enforced, that it would close up over 60 percent of the developable land in this country. It would make the dream of home ownership just go out of sight from an economic standpoint for most young couples in this country.

It has been mentioned before, but I think it bears repeating, that support for moving forward with H.R. 961 has come from a wide range of groups, including the National Governors' Association, the National League of Cities, the U.S. Conference of Mayors, the National Association of Counties, the Association of State and Interstate Water Pollution Control Administrators.

□ 1800

The water pollution control administrators are people who work full time in this area, and I can assure my colleagues they would not support this legislation were it not good clean water legislation. This bill is also supported by the Association of Metropolitan Sewerage Agencies, the American

Public Works Association, the Clean Water Council, the American Farm Bureau Federation, and the U.S. Chamber of Commerce, and the National Federation of Independent Businesses among many, many others.

H.R. 961 was reported out of our committee by a strong bipartisan vote of 42 to 16. This bill deserves bipartisan support now. It will return common sense to our signatory efforts in regard to clean water. It will return flexibility. It will do away with many of the unfair bureaucratic burdensome decisions that have come out in recent years.

Most importantly of all, Mr. Chairman, and I would like to emphasize this, if H.R. 961 passes as is, it will be the toughest clean water law in the world. This bill passing as is will be the toughest clean water bill in the world. It just does not go to some of the extremes that some people would have us do, some of the ridiculous extremes that some people would have us go.

So let us vote for the toughest clean water law in the world. Let us vote for Chairman SHUSTER's bill, H.R. 961. I urge its passage.

Mr. FARR. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise today in strong support of this substitute measure authored by the gentleman from New Jersey [Mr. SAXTON], the gentleman from Indiana [Mr. ROEMER], and the gentleman from New York [Mr. BOEHLERT]. It is not a perfect fix of H.R. 961's problems, but it offers a rational middle ground that preserves the rights of H.R. 961 while turning back H.R. 961's most damaging proposals, and it is interesting to note that many of my colleagues served in State legislatures before coming here, and I would like to point out that in a letter that I received from the National Conference of State Legislators they indicate that unless H.R. 961 is significantly amended during the floor consideration, the NCSL urges them to vote against this bill, and they point out that the problems with the bill that is before us that are addressed by this amendment is that the bill in print limits State discretion to impose effluent limits which are different than Federal limits. It also reduces State authority to update and strengthen controls on toxic and other discharges by providing that effluent limitations only be reviewed every 10 years.

So not only myself and others are urging our colleagues to support this, but the State legislatures are as well. The substitute amendment restores vital protections for wetlands, but makes commonsense exemptions for agriculture, flood control and other important activities. These provisions are based on wetlands language offered by the National Governors Association and increase the States' role in wetland's protection.

The substitute amendment replaces the repeal of the Coastal Zone Management Act non-point source program included in H.R. 961 with amendments to improve the program proposed by Coastal States Organizations. Any legislator representing a coastal State knows the significance of having the ability to control non-point source run off because it runs into the ocean. Our local economies are based on the fact that people make livings off that ocean, both for recreation and primarily for commercial fishing, and if that environment is not safe, and sound, and clean, then we are going to destroy the very economic base of many of our coastal regions.

Mr. Chairman, I think this bill in its drafted form goes a long way to doing that, so that is why I support the Saxton proposal, because it is a reasonable alternative, it is going to help protect clean water, and we need to do that because we are just borrowing time from future generations, and we need to turn over the world in a better shape than which it is in now. So I urge my colleagues to support this substitute.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, May 8, 1995.

Re H.R. 961, Clean Water Act Amendments of 1995.

Hon. SAM FARR,
U.S. House of Representatives, Washington, DC.

DEAR REPRESENTATIVE FARR: On behalf of the National Conference of State Legislatures, I am writing to express concerns about H.R. 961 as reported by committee. Unless H.R. 961 is significantly amended during floor consideration, NCSL urges you to vote against the bill.

In partnership with the federal government, states have worked diligently for more than two decades to achieve the Clean Water Act's goals of restoring and maintaining our nation's waters. The Clean Water Act serves as a baseline for state programs, while giving states flexibility to go beyond federal minimum requirements. Many of the problems facing our nation's water bodies are interstate in character and cannot be addressed by any state acting alone. Over the past two decades states have come to rely upon the state-federal partnership that is the cornerstone of our system of public health protection.

While NCSL applauds H.R. 961's proposed increases in SRF funding, efforts to provide states with greater flexibility, and other provisions that directly benefit state and local government, we are concerned with other aspects of the bill. For instance, if enacted in its present form, H.R. 961 would permit increased degradation of our nation's waters and allow for delay in achieving the Clean Water Act's goals. We urge you to seriously consider any amendments which aim to strike a proper balance between increased state authority and preservation of minimum federal standards.

One of our specific concerns with H.R. 961 is that it would reverse our nation's goal of eliminating the net loss of both wetlands acreage and wetlands habitat values. Wetlands are an integral component of both the environmental and economic health of our nation. They provide important economic and recreational benefits such as hunting, fishing, natural flood control, recharge zones for groundwater aquifers, reduced shoreline erosion and water purification through filtration of sediments and toxic pollutants from runoff. Given the direct and indirect economic benefits that are derived from wetlands, we are concerned by provisions in H.R. 961 that would encourage and increase development activities in wetlands.

In addition to the above, NCSL is also concerned with other provisions of H.R. 961. For instance, as reported by committee, H.R. 961 would: Limit state discretion to impose effluent limits which are different than federal limits; reduce state authority to update and strengthen controls on toxic and other discharges by providing that effluent limitations can only be reviewed every ten years; relax effluent pretreatment standards for waste waters destined for Publicly Owned Treatment Works (POTW's); and waive compliance time deadlines for any year in which actual funding levels fall short of authorized levels.

While NCSL supports many of the bill's provisions that would directly benefit states and their political subdivisions, we nonetheless do have concerns with other aspects of the bill. It is our sincere hope that floor amendments during consideration of the bill will succeed in addressing and resolving our concerns.

Thank you for the opportunity to share these thoughts with you.

Sincerely,

JANE CAMPBELL,
President, NCSL, Assistant Minority Leader, Ohio House of Representatives.

Mr. LAZIO of New York. Mr. Chairman, will the gentleman yield?

Mr. FARR. I yield to the gentleman from New York.

Mr. LAZIO of New York. Mr. Chairman, I rise today to support the Saxton-Boehlert-Roemer substitute to H.R. 961, the Clean Water Act Amendments of 1995. This substitute is a sensible, reform measure which fixes many of the problems associated with Clean Water Act regulations, without sacrificing essential protections, particularly in the areas of wetlands policy and coastal zone management.

Long Islanders have always had a special appreciation for the delicate nature of our Nation's waters and the need to protect them for our economic health, as well as for future generations. My constituents carry on this tradition of concern. Long Island is, after all, an island. My district on the south shore has over 35 miles of coastal shoreline. Long Island's coastal waters are a premier source of recreation and the backbone of an essential tourism industry, which relies on our vast stretch of sandy beaches. In addition, they house thousands of acres of shellfish beds, and support both commercial and sport fishing.

Because of this reliance on our coastal waters, both wetlands protection and coastal zone management are essential to both the economic health and quality of life on Long Island. Wetlands are a natural filtering system which help protect the health of our fish population as well as help filter pollutants from seeping into our groundwater. Yet H.R. 961 would remove over 60 percent of our Nation's wetlands from any level of protection.

The Saxton-Boehlert-Roemer substitute addresses the concerns of private landowners by putting in place a proposal developed and supported by the National Governor's Association which simplifies and expedites the wetlands permitting process by expanding the role of State wetlands managers in the permitting process. This will help encourage decisions about wetlands management to be made on the local level, without paving the way for widespread wetlands destruction.

H.R. 961 would also repeal section 6217 of the Coastal Zone Act Reauthorization Amendments [CZARA], which is the only enforceable program developed by Congress to deal with nonpoint source pollution of coastal waters. Consequently, this bill would expect an already weak nonpoint source pollution program, section 319, to somehow attend to the special problems associated with coastal pollution. This pollution has resulted in the closure of 200,000 acres of New York City and Long Island shellfish beds. It has severely impacted both commercial and recreational fishing on Long Island. I clearly remember recent summers when medical waste, including used syringes, washed up on shore and forced the closure of certain Long Island beaches on hot summer days. In fact, more than 10,000 beaches nationwide were closed to bathing over the past 5 years due to pollution. My district cannot afford this kind of loss. The coastal State governors have spent years working on sensible State-managed programs to this threat to coastal waters. Working with CZARA, the coastal States have finally come up with solutions that they feel will work best for their States. The Saxton-Boehlert-Roemer substitute acknowledges this effort by adopting the reforms proposed by the 29 States of the Coastal States Organization for implementing CZARA.

Like many other coastal areas around the country, Long Island is dependent upon its waters to support its economy as well as its quality of life. By including provisions developed by the National Governor's Association and Coastal States Organization, the Saxton-Boehlert-Roemer substitute, gives each State the flexibility to develop the best programs to protect its water, while maintaining critical Federal support. I urge my colleagues to support this substitute.

Mr. ZELIFF. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong opposition to the Saxton-Boehlert substitute to H.R. 961.

Let us face it, colleagues. The Clean Water Act has made great strides in improving the quality of water sources and aquatic habitats across our Nation. However, unintended consequences of the provisions of the act as well as advances in environmental science and technology over the past 20 years have necessitated a revision of this law. H.R. 961, as passed by the Transportation Committee, brings a 1970's law into the 1990's and the 21st century.

With wastewater treatment needs of communities across the United States projected to cost over $120 billion during the next 20 years, it is essential that innovative financing and treatment methods be utilized. States need to be provided flexibility in the implementation of clean water programs in order to best address the particular water resource needs and conditions of their communities. Cost-benefit analysis, risk assessment and the use of sound science need to be included in a national clean water program to ensure that regulations do not burden the States, localities, and individual land owners.

Finally, commonsense reforms of the current section 404 wetlands permitting process are needed to relieve private landowners of the current regulatory maze and to protect their rights as guaranteed by the Constitution of the United States. Under the current Clean Water Act, landowners have been prosecuted or threatened with prosecution for removing trash, adding fill dirt, repairing a levee, installing a tennis court, plowing land, and planting crops without a section 404 permit.

A great deal of time and effort has been invested by Chairman SHUSTER and the Transportation and Infrastructure Committee to ensure that these issues are all addressed in H.R. 961 and that all perspectives on clean water issues have been taken into consideration. At the same time, H.R. 961 facilitates the continued improvement in the quality of our Nation's water resources. This bill has had resounding bi-partisan support throughout the committee process, having passed the subcommittee by a vote of 19 to 5 and the full committee by a vote of 42 to 16. I commend Chairman SHUSTER for his commitment to reforming the Clean Water Act to be a more effective and efficient national policy without compromising America's water quality, and for his dedication to seeing that this legislation comes to the floor during this Congress.

The Saxton-Boehlert substitute would gut the provisions of H.R. 961 which bring the Clean Water Act into the 21st century. The Saxton-Boehlert substitute does little to change the inflexible Federal Stormwater and nonpoint source regulations that are breaking the financial backs of small and rural communities across the Nation. The substitute does not adequately relieve the States, localities and landowners from onerous regulations and loss of private property rights. I strongly urge my colleagues to vote "no" on the substitute.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. ZELIFF. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the gentleman said this would gut the provisions of the bill that bring us into the 21st century. It would be helpful to us if the gentleman elucidates those particular provisions because we are all anxious to go into the 21st century.

Mr. ZELIFF. I agree, and, although we have an honest disagreement, I think that the Contract With America and all that we were trying to do in terms of giving back some of the power to the States to make decisions classifying what a wetlands is and a wetland is not makes all the sense in the world, and so that kind of common sense brings us into the 21st century. Regulations and laws that cost all of us in taking precious rights away from us as individuals, putting those regulations back with the States and all those things make a lot of good common sense and hopefully go——

Mr. BOEHLERT. Wetlands provision we have adopted the language advanced by the National Governors Association because, like the gentleman, we agree that the Governors are in the best position to deal with these very sensitive issues.

Mr. ZELIFF. The Governors do not support the gentleman's amendment.

Mr. BOEHLERT. The Governors support title VIII to the bill as——

Mr. ZELIFF. Support the gentleman's position.

Mr. CARDIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the Saxton-Boehlert-Roemer substitute amendment. It is far preferable to the underlying bill that has been brought to the floor.

Let me comment for a moment, if I might, about the efforts we have made in Maryland in regard to the Chesapeake Bay. This is an effort that has been undertaken now for over 15 years in which the people of Maryland have made a tremendous sacrifice in order to reclaim the quality of the water of the Chesapeake Bay. This has not just been an effort by the people of Maryland. It has been a cooperative effort between the people of Maryland, Pennsylvania, Virginia, the Nation's Capital. It has been an effort between the private sector and the Government working together in order to deal with some very serious pollution problems within the Bay. It has been a model program.

Mr. Chairman, we have seen this partnership has worked through some very tough changes in the manner in which we deal with water quality, including land use management, and fishing restrictions and other policies that we have undertaken in order to deal with the Chesapeake Bay, and it has been successful. The underlying bill would be a major step backward on the quality of the Chesapeake Bay.

Let me mention 3 significant differences between the underlying bill and the substitute that is before us. First, as it relates to the wetlands protection, the surge of nutrients into the Bay acts as a strangling of the oxygen that is important for the fish life, for the waterfowl, for oysters, crabs, and I could go on.

□ 1815

The quality of what we know on the Chesapeake Bay, whether it is for commercial or recreational purposes, is contingent upon us being able to control the level of nutrient in the Bay. That is why under the Bay Agreement we have a commitment to reduce the levels of nutrients by 40 percent by the year 2000.

The wetlands operate as a filtering system to remove nutrients and sediment from the Bay. Between 1982 and 1989, in the States of Maryland, Virginia, and Pennsylvania, we lost 37,000 acres of wetlands. That is equivalent to the size of the District of Columbia.

The substitute uses the standards helped developed by the National Governors' Association in order to put sensible restrictions on wetlands to protect wetlands. The underlying bill would literally allow the destruction of thousands, tens of thousands of acres of wetlands in our region and around the Nation.

A second reason why the substitute is far preferable is the pollution from storm water systems. We have a lot of old urban sewage systems in our State. During heavy storms, pollution, raw sewage, will just literally flow into the tributaries that lead into the Chesapeake Bay. The substitute that is before us offers some hope that we can deal with this issue. The underlying bill does nothing at all to protect us from the problems of storm water pollution.

Let me mention a third issue why the substitute is far preferable than the underlying bill, and that is the coastal zone non-pointed source runoff controls. Again, we are dealing with the nutrient level that I mentioned before. The underlying bill will allow the nutrients to continue, which act as a suffocation to the oxygen necessary for aquatic life. The substitute provides protection in this area, again allowing us to deal with the unacceptable level of nutrients that are flowing into the Chesapeake Bay and other waters.

Mr. Chairman, the bottom line is this: We have invested an awful lot in cleaning up the Chesapeake Bay in this region. We have put a lot of time, effort, and resources, both governmental and private sector. We have a choice in a few moments whether we are going to move forward in partnership with our States and with our local governments and with the private sector to help clean up the Chesapeake Bay, or whether we are going to move backwards.

The Federal Government has been a partner in this effort, a very proud partner in this effort, in helping the region deal with the Chesapeake Bay, which has been a model of a multi-jurisdictional body of water in dealing with pollution. It has acted as a model.

I hope the Congress, I hope my colleagues, will continue that fine tradition. Vote for the substitute, vote against the underlying bill. Let us continue that partnership and allow the people of our region to continue their efforts to reclaim one of the most important assets that we have, the Chesapeake Bay.

The CHAIRMAN. The time of the gentleman from Maryland [Mr. CARDIN] has expired.

(At the request of Mr. SAXTON and by unanimous consent, Mr. CARDIN was allowed to proceed for 2 additional minutes.)

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. CARDIN. I yield to the gentleman from New Jersey.

Mr. SAXTON. I would just like to ask the gentleman, the nutrification process that you speak of in bodies of waters such as the Chesapeake Bay where nutrients create a situation where aquatic life cannot exist, at least in a healthy way, comes from in most cases the non-point source pollution issue that we are addressing in the substitute. The educational process, to enlist the help of the army of people necessary to change our forms of behavior, is absolutely necessary, as included in this bill.

I bring this up because the Chesapeake Bay is the great example of a great body of water that everybody is in love with and that everybody would like to help to nurture back to a good state of health, if only we had programs to help people understand how to do that.

I grew up in northeastern Pennsylvania on the south branch of the Tunkhannock Creek, which nobody has heard of. But it feeds into the east branch of the Susquehanna River, which is of course the source of fresh water for the Bay, and that is where the nutrients come from. My father a few years ago adopted the south branch of the Tunkhannock Creek and went about trying to eliminate the nutrients coming from that area.

Throughout Pennsylvania, those kinds of programs are necessary in order to help bring the Bay back to an appropriate level of healthfulness.

So I thank the gentleman for his comments.

Mr. CARDIN. Mr. Chairman, reclaiming my time, I thank the gentleman for his comments. He is absolutely correct. The nutrients are acting as a suffocation to aquatic life. Nonpoint pollution is the cause. Education is important. The substitute moves us in that direction to control the issues. The underlying bill would prevent the actions. I appreciate the comments made by the gentleman on this.

Mr. ROBERTS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in opposition to the substitute.

Mr. Chairman, this is a "while I" speech. While I share the concern and admire the leadership of Messrs. BOEHLERT and SHAYS and formerly Mr. SAXTON, I must rise in opposition to this amendment.

Let the record show that I am for a clean Chesapeake Bay. Let the record show I hope the gentleman from New Jersey is able to swim as long as he wants in the Susquehanna, or whatever. But I must say that agriculture has a stake in this. I think there has been debate here, and as chairman of the House Committee on Agriculture, I feel compelled to inform Members that most of those interested in agriculture are very concerned about this substitute.

Now, you are going to say "Who is that," and I am going to tell you. The Agricultural Retailers, American Association of Nurserymen, American Crop Protection Association, American Farm Bureau, American Feed Industry, American Sheep Industry, American Soybean Association, CF Industries, Inc., Agriculture Association, Farmland Industries, the dairymen, and National Association of State Departments of Agriculture. They are extremely important as you work on the environment. You have got to work with the state departments of agriculture as well as the state departments of environmental protection.

We have the wheat growers, the cattlemen, the corn growers, the cotton council. I can go on and on and on. But basically all of agriculture says while they understand the concern and the apprehension of those who have offered this substitute, that we need this bill. We need the other bill.

Now, why? Let me also add, if you are from rural and small town America, the National Federation of Independent Business, one of the many outfits here that rates Members of Congress. Some Members of Congress that are about, wake up in the offices, wake up here. The NFIB rating, two times, one on the substitute and one on final passage. They are opposed to the substitute; they are for the final passage.

Why would the NFIB and agriculture indicate their opposition to the substitute? Well, the substitute allows the 1987 Core Delineation Manual to be used for making wetlands determinations. That is the manual that has caused all the problems. That has been the problem.

This bill sets out a better determination, a much better definition. This 1987 manual would let the regulators decide wetland hydrology by looking at

watermarks on trees, even though there is no water on the land. A parcel of land could be damp a foot below the surface and still meet their requirement. That has been part of the problem. We do require 21 consecutive days where a wetland would be wet. I think that makes a little sense. If more than 50 percent of the vegetation on the land is made up of plants that also thrive in other areas, well, there you are, that requirement of qualification is met.

This bill, the chairman's bill, the bill that we also support on the House Committee on Agriculture, requires some water loving wetland plant to be present. I think that makes common sense.

I will tell you, I know the gentleman from New York, [Mr. BOEHLERT] and the gentleman from Michigan, [Mr. DINGELL] and I have the utmost respect for him, has said it does not harm agriculture. I know the gentleman has made a very honest effort in that regard. But the chairman's bill allows State and local cooperation to restore a wetland ecosystem.

You know what? We have debated this and debated this. No one here knows exactly what an ecosystem is, a wetlands ecosystem, and that is the problem. Because when these matters end up in a Federal District Court, the judge then turns to the EPA and the Fish and Wildlife Service to tell him what a wetlands ecosystem is, and we are right back to the regulator and we are right back to the problem that has caused all of the problem in regards to farm country.

We have heard a lot about the Chesapeake and the Susquehanna. We have got a river in Kansas, one of the few rivers in Kansas. It is called the Arkansas. There is a community there called Great Bend, Kansas. And we heard a lot about nutrients and the different standards.

That community is now going to spend $12 million for a new waterworks system. You know why? There is too much chlorine in the water. It could endanger an endangered species fish called the shiner in the local river. One basic problem, there is no water in the river and there is no fish. Now, other than that, it makes a great deal of common sense.

That is an extreme example, but that is the kind of thing we are facing in agriculture. Low spots in the field where, as I said before, no self-respecting duck would ever land.

I urge you, if you come from rural and small town America, if you care about the NFIB rating, and if you serve on the Committee on Agriculture, vote against this substitute and support the bill.

AMENDMENT OFFERED BY MR. MINGE TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. SAXTON

Mr. MINGE. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute.

Mr. SHUSTER. Mr. Chairman, I reserve a point of order on the amendment.

The CHAIRMAN pro tempore (Mr. ENSIGN). The gentleman reserves a point of order on the amendment.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. MINGE to the amendment in the nature of a substitute offered by Mr. SAXTON: "Page 130, after line 5, add the following: '(5) Agricultural Permit Authority.—The Secretary of Agriculture is authorized to issue permits in accordance with this section for any activity resulting from normal farming, silviculture, aquaculture, and ranching activities and practices carried out on agricultural lands or for any activity incidental thereto carried out on agricultural lands if the agricultural land is not subject to sections 1221–1223 of the Food Security Act of 1985 (16 U.S.C. 3821–3823). Any activity allowed by the Secretary of Agriculture under sections 1221–1223 of the Food Security Act of 1985 (16 U.S.C. 3821–3823) shall be deemed permitted under this section and no individual request for or granting of a permit shall be required.'"

"Page 146, after line 7, add the following: '(z) Mitigation of Agricultural Lands.—Any mitigation approved by the Secretary of Agriculture for agricultural lands shall be accepted by the Secretary as mitigation under this section.'"

Mr. MINGE (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. MINGE. Mr. Speaker, I would like to briefly discuss the reason for this amendment. The problem that we face in rural areas with wetland delineation and permitting under section 404 is largely a problem that results from several Government agencies trying to make decisions about the same land. We have the Army Corps of Engineers, the Environmental Protection Agency, the U.S. Department of Agriculture, and the Fish and Wildlife Service all focusing on what ought to be done. The farmers and others in the rural area have found that this vast array of agencies at the State, Federal, and local level has resulted in delays of years, frustration, expense, and despair.

What is important I believe is that we clearly recognize here in Congress that although we have committees and we have jurisdiction and are concerned that we maintain clear lines of authority, that out there in the field, in the real world, it is terribly important, individuals, that we at the Federal level speak with one voice.

The purpose of my amendment is to make it possible for farmers and rural America to ask for an opinion on whether or not their situation requires a permit, whether or not mitigation that is acceptable to one Federal agency is acceptable to another, and have a straight answer from one Federal officer.

I submit that part of the credibility that we as Members of Congress and the Federal Government face is that we have been unable to put things together so that our agencies do in fact work with one voice, and we have one-stop shopping.

For this reason, Mr. Chairman, I request that this body approve this amendment and improve the way that we deal with people in rural America. This is not an amendment that goes to the merits of the legislation in terms of policy decisions, over what should and should not be a wetland. Instead, it goes to the procedure by which people deal with our Federal agencies. I request that this amendment be passed.

□ 1830

Mr. SHUSTER. Mr. Chairman, I withdraw my reservation of a point of order. As I understand, the amendment will be accepted by the author of the substitute, and we may have problems with this, but we can fight that battle within the context of the whole substitute.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. MINGE. I yield to the gentleman from New Jersey.

Mr. SAXTON. Mr. Chairman, on behalf of the authors of the substitute, we do accept the amendment. We believe that it goes to the best interests of the farmers that the gentleman from Kansas was speaking so eloquently about just a few minutes ago. We commend the gentleman for his foresight in bringing this matter to our attention.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. MINGE. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I would like to compliment the gentleman, too, because we are vitally concerned with the interests of agriculture. The gentleman has evidenced a sensitivity to that, and we are glad to accept that proposal.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mr. MINGE. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I would just say, as one of the authors of the substitute as well, that we feel that we want to do everything we can to work closely with agriculture. We feel this improves the bill for farmers, for conservation, and for the convenience of farmers as one-stop shopping. And we are happy to accept the amendment.

The CHAIRMAN pro tempore (Mr. ENSIGN). The question is on the amendment offered by the gentleman from Minnesota [Mr. MINGE] to the amendment in the nature of a substitute offered by the gentleman from New Jersey [Mr. SAXTON].

The amendment to the amendment in the nature of a substitute was agreed to.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise today in support of the Saxton-Boehlert substitute to the Clean Water Act. I have serious concerns about the impact of certain provisions of H.R. 961 on my State of Connecticut.

First, the Shuster bill repeals the coastal water protection program established by the Coastal Zone Management Act, which recognizes the unique water pollution issues facing coastal States and requires these States to take special steps to control nonpoint source pollution.

Connecticut has been a leader in this area, developing an innovative and successful program. Scaling back the Federal program would have serious negative consequences for my State's shores because no matter how committed Connecticut is to coastal quality, negligence by neighbor states could pollute our shores and our waterways. Nonetheless, the significant changes in the Coastal Zone Management Act are long overdue and to address these problems with the current program, the Saxton-Boehlert substitute adopts the recommendations made by the coastal State Governors, to preserve the benefits of the Coastal Zone Management Act but gives States greater flexibility to delineate the scope of their managed areas, expand the time frame for implementation of reforms and allow States to select and prioritize the projects they believe will address their nonpoint source pollution problems.

Given the facts that in the past 5 years over 10,000 beaches in the United States have been closed because of coastal water pollution and that over one-third of all shellfish beds are closed or threatened by water pollution, including 32 in Connecticut, we must focus greater attention, not less, on the problems of water pollution in our coastal zones.

This is both an economic and an environmental imperative. The pollution threatening our coasts stems mainly from nonpoint sources, storm water runoff from urban, suburban, commercial and industrial areas now accounts for 30 percent of water quality impairment. The current Clean Water Act mandates a program to control polluted storm water from municipal industrial sources and has already been phased into effect in most of the largest cities and industries.

Even though 342 cities and 134,000 industrial sources already have their permit and abatement programs in place, the problem of controlling storm water runoff has proven to be quite complicated. EPA has placed a 6-year moratorium on any new requirements on smaller cities or smaller industries while it works out the problems the programs have encountered in regard to small cities and small businesses.

The substitute adopts the EPA moratorium as law and extends it for 10 years. This is the right approach, because it maintains the pressure on States to deal with these issues while at the same time relieving States of taking irrational steps in regard to small towns and small industries.

Another provision with serious potential implications for Connecticut is the wastewater treatment standards, specifically secondary treatment waivers. The current Clean Water Act establishes secondary treatment as a minimum standard for municipal sewage treatment plants, governing how clean wastewater must be before it is discharged into rivers, oceans and other bodies of water. All municipally owned sewage treatment plants were required to provide secondary treatment by 1988 and all municipal facilities in Connecticut have already attained at least secondary treatment capability and some have gone beyond that standard.

Despite the fact that this requirement has been in effect for almost 7 years, the underlying bill seeks to exempt towns of less than 10,000 people from secondary treatment requirements.

Along the Connecticut River, which cuts through the heart of all of New England, this exemption would create havoc. Most of the towns in New England are smaller than 10,000 people. A town of 10,000 people gives off a million gallons of sewage a day.

Like most other States, Connecticut still has a long way to go in achieving its clean water goals. More than a third of the assessed rivers and estuaries cannot sustain fishing, permit swimming or maintain aquatic life year round. Exempting the majority of our towns as a majority of less than 10,000 people from secondary treatment requirements will not continue the progress we have made at great expense.

Finally, I am pleased to support the wetlands provisions of the Saxton-Boehlert substitute. This title adopts the recommendations of the National Governors Association with input from State wetlands managers.

I would remind Members that both in the wetlands section and in the coastal management section the Boehlert substitute simply adopts the recommendations of the State Governors for the reforms that their people say are needed in these programs.

I am troubled by title VIII of H.R. 961 for several reasons. The bill establishes a new entitlement for property owners whose property value is diminished by 20 percent. We have discussed this at great length. I will not repeat that discussion.

Secondly, the bill would require the Army Corps of Engineers to classify all wetlands into three categories with only the top category being fully protected.

The CHAIRMAN pro tempore. The time of the gentlewoman from Connecticut [Mrs. JOHNSON] has expired.

(By unanimous consent, Mrs. JOHNSON of Connecticut was allowed to proceed for 1 additional minute.)

Mrs. JOHNSON of Connecticut. Mr. Chairman, this would have a harsh effect on Connecticut where at least 60 percent of the wetlands would be declassified. Though I support the concept of classifying wetlands, this bill sets out criteria for classification not based on sound science, according to the newly released National Academy of Sciences wetlands report.

Further, the costs associated with classifying every wetland in the Nation would be staggering. A far less extensive plan to map all flood plain areas, which in Connecticut we have accomplished, wound up taking 10 years in the nation and cost a billion dollars.

In contrast, the substitute's wetlands provisions allow the Army Corps greater flexibility in wetlands delineation and encourage states to adopt their own permitting program independent of federal control. It encourages wetlands classification based on science with exceptions only for certain functioning wetlands and certain agricultural lands.

State and individuals have had difficulty applying current wetlands laws in recent years, but I am confident that the proposal put together by the States themselves and incorporated in the Saxton-Boehlert substitute addresses these problems effectively.

The CHAIRMAN pro tempore. The time of the gentlewoman from Connecticut [Mrs. JOHNSON] has again expired.

(By unanimous consent, Mrs. JOHNSON of Connecticut was allowed to proceed for 30 additional seconds.)

Mrs. JOHNSON of Connecticut. Mr. Chairman, faced with serious water quality problems a generation ago, the state of Connecticut passed its only Clean Water Act, and this is why I wanted the 30 additional seconds. We passed the first one.

The Federal law is modeled on our act. And since its passage, we have become the Nation's leader in the production of oysters because we have so cleaned up our offshore waters. With that, I ask Members' support of the Boehlert amendment.

Ms. PELOSI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the substitute offered by the gentleman from New Jersey [Mr. SAXTON], the gentleman from New York [Mr. BOEHLERT], the gentleman from Indiana [Mr. ROEMER], as amended by the gentleman from Minnesota [Mr. MINGE]. This substitute amendment is a reasonable alternative to H.R. 961, and I urge all of my colleagues to support it.

The substitute lessens the devastating impact of H.R. 961 by including the recommendation of the National Governors Association for protecting wetlands.

In addition, it incorporates a proposal for addressing coastal nonpoint pollution developed by the Coastal States Organization. The substitute, unlike H.R. 961, will not roll back toxicity standards that are working, and it will not provide a laundry list of exemptions for various industries to release new pollutants at will.

Mr. Chairman, of special concern to my state of California and to all coastal States, and I might add my native State of Maryland, home of the great Chesapeake Bay, is a provision which repeals the only existing program for reducing agricultural and urban runoff. This type of runoff is an especially significant contributor to coastal pollution and results in the closing of beaches, declining coastal fisheries, threats to drinking water and the shutting down of the shellfish beds. We are all concerned about the enforcement of regulations over the wetlands. We have heard this over and over, and I think it deserves attention. But, Mr. Chairman, this legislation goes too far because it affects millions of acres of wetlands by allowing these natural areas to be developed and polluted.

This would jeopardize over 75 percent of our fish and shellfish, which depend on marshes and other wetland environment.

Wetlands are an integral component of both the environmental and economic health of our Nation. They provide important recreational benefits, natural flood control, reduce shoreline erosion and water purification through filtration of sediments and toxic pollutants from runoff. The provisions of H.R. 961 would cause irreparable damage to these sensitive lands.

Mr. Chairman, the Clean Water Act is a tremendously complex piece of legislation dealing with national issues of critical importance. Unlike previous reauthorizations, however, H.R. 961 fails to make progress toward a cleaner environment.

Mr. Chairman, the substitute offered by our colleagues is reasonable and sensible, when compared to H.R. 961. Virtually every provision of H.R. 961 is harmful to both people and the environment and would degrade rivers, streams, estuaries, wetlands, and coastal zones throughout the country, including the sources of drinking water for two-thirds of all Americans.

Our Nation will never have a clean bill of health in any respect without clean water. I urge my colleagues to support the Saxton-Boehlert-Roemer substitute and to vote "no" on H.R. 961.

Mr. SAXTON. Mr. Chairman, may I inquire of the Chair, with the gentleman from Indiana, if we might explore limiting debate time to perhaps an additional period of time. May I ask the gentleman, how many additional speakers he believes he may have.

Mr. ROEMER. Mr. Chairman, we have one additional speaker.

Mr. SAXTON. I believe on our side we have three or four, possibly three additional speakers.

Mr. BORSKI. Mr. Chairman, I think there is one speaker in support of the substitute and one in opposition to the substitute on this side.

Mr. SAXTON. Mr. Chairman, I ask unanimous consent that we limit additional debate time to 30 minutes, to be divided equally between the proponents and the opponents of the substitute.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. BOEHLERT. Reserving the right to object, Mr. Chairman, I think that works contrary to the interests of the authors of the amendment because there are four of us who wish to speak as advocates, so those four should each receive 5 minutes. I think there are two opposed. That would be four and two. So there would be seven more speakers, 5 minutes apiece.

Mr. SHUSTER. There are four opposed. Four are in favor, four opposed. That is 40 minutes.

Mr. SAXTON. If we could limit debate to 45 minutes, that would take care of the situation.

Mr. BOEHLERT. Mr. Chairman, I withdraw my reservation of objection.

Mr. SAXTON. Mr. Chairman, I ask unanimous consent that we limit further debate to 45 minutes, to be equally divided between the opponents and proponents.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from New Jersey?

Mr. BORSKI. Reserving the right to object, Mr. Chairman, could we just limit it to seven speakers, 5 minutes each?

□ 1845

Mr. SAXTON. Mr. Chairman, I amend my unanimous-consent request.

Mr. BORSKI. Mr. Chairman, I withdraw my reservation of objection.

Mr. SHUSTER. If the gentleman will yield, I understand he has 4 in favor and we have 4 opposed, so that is 8.

Mr. SAXTON. I amend my unanimous consent request to that effect.

The CHAIRMAN pro tempore (Mr. ENSIGN). The pending unanimous consent request is to limit debate on the Saxton amendment and amendments thereto to 45 minutes, controlled by the gentleman from New Jersey [Mr. SAXTON] and the gentleman from Pennsylvania, [Mr. SHUSTER], and they will yield debate as they see fit.

Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. SAXTON. Mr. Chairman, I yield 5 minutes to the gentleman from New Jersey [Mr. ZIMMER].

Mr. ZIMMER. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, we have had considerable discussion on this floor about the role of science in the consideration of this legislation, and legislation in general. Surely I would agree that we, as Members of Congress, have the responsibility to write the laws, but we also have a responsibility to take into account the facts of nature that scientists can describe for us. In that regard, there is an anecdote that may shed some light on this issue.

As we know, Mr. Chairman, from our high school geometry classes, the ratio between the diameter of a circle and the circumference of a circle is known as pi, and is equal to roughly 3.14159. It is a long decimal number that is hard to remember, so in 1897 the legislature of the State of Indiana decided that they would make life easier for high school students by passing a law that the value of pi would be 3.0 exactly.

Mr. Chairman, the legislators of the State of Indiana had it wrong, because regardless of what any legislature or Congress says the value of pi is, it will remain and will always be 3.14159.

There is a parallel here to the legislative definition of wetlands. Wetlands are defined by what they do in nature. They are not defined by any arbitrary formula written in legislation. Wetlands are useful. Wetlands control flooding. Wetlands provide wildlife habitat. Wetlands provide water purification and aquifer recharge.

If lands are covered with water for any period of time, and they perform those functions, they are wetlands, regardless of what the committee says, regardless of what this Congress says. We should recognize that, and we should protect the value of the wetlands because of what they do.

Mr. Chairman, in my State of New Jersey, the arbitrary legislative definition of wetlands proposed by this bill will devastate wetlands protection. That is why I support the Saxton substitute. According to the New Jersey Governor's office, under the provisions of H.R. 961, 90 percent of New Jersey's remaining wetlands will no longer qualify as federally protected. Most of the State's remaining wetlands are invaluable to flood control, but they do not meet the test that is set forth in the legislation that they have to be wet in the growing season for at least 21 consecutive days. This is a hard blow to a State that has lost 50 percent of its wetlands to development over the last 25 years.

Michigan and New Jersey are unique in that they are the only two States in the Union that have assumed wetlands delineation authority from the Federal Government under a provision of the 1987 act. While it is true that H.R. 961 places no restrictions on a State's ability to run its own stricter wetlands program, because of the State's assumption of the Federal program, there

is no separate State-run program in New Jersey. New Jersey's laws and regulations are all based on and refer to definitions and legislative language in the current section, 404. Therefore, by changing section 404, we are limiting the ability of the State of New Jersey to protect its own wetlands in the manner that its own legislators have chosen to do.

To retain the current level of protection, the State legislature must pass a new set of wetlands laws without section 404 references, and promulgate new regulations with the normal lengthy notice and comment process. This will put the few remaining wetlands in my State of New Jersey at considerable risk.

According to Congressional Quarterly, wetlands save this country $31 billion a year as a result of flood mitigation. New Jersey rightly does not want to expose the communities along the Raritan River, the Passaic River, the Delaware River, to the enormous damage of flooding that has occurred in recent decades and in recent years in our State. However, that would be the effect of this legislation, unless it is amended by the Saxton substitute.

In addition, CBO scored H.R. 1330, the bill on which the chairman, the gentleman from Pennsylvania [Mr. SHUSTER], based title VIII of this legislation, to cost $10 to $15 billion to protect only type A wetlands. Congressional Quarterly estimates that the American taxpayers could shell out up to $45 billion if the Army Corps of Engineers does not permit development of all the wetlands covered by H.R. 961. Because the corps has a budget of only $4 to $6 billion, this poses an obvious problem. I urge my colleagues to vote for the Saxton amendment.

Mr. SHUSTER. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from California [Mr. CUNNINGHAM].

Mr. CUNNINGHAM. First of all, Mr. Chairman, I would like to thank the chairman for the earlier recognition. At this time I would have been swimming out of the mouth of the Red River over North Vietnam, and I want to tell the Members, it was not a river of pollution that you would want to swim in, or your children to swim in.

Would a Clean Water Act help clean up that river? Absolutely. Would the current Clean Water Act of today be supported by members? I think with clearer definitions. however, the last gentleman from New Jersey, according to him, a mud puddle that would replenish the aquifer would be considered a wetland. That is the lunacy of the bill. That is why, exactly why we are fighting.

There is probably not a Member in here that would not support the current Clean Water Act. There is not a Member that would not support the bill offered by the gentleman from New Jersey [Mr. SAXTON]. The clean water and clean air and endangered species, and yes, even the EPA, the organization, would be supported, but they have gone too far. There have been extreme cases.

However, there are honest attempts, and I appreciate, first of all, the dialogue. I do not think there has been a lot of mudslinging on either side of the issue. We have been talking about the issues, and they have been honest. I think they have been honest attempts to achieve elemental environmental security.

However, we have in this body fundamentalists, fundamentalist leftists, that have violated the interests and used the well-meaning legislation to the extremes. I am not talking about the gentleman from Indiana [Mr. ROEMER] or the gentleman from New Jersey [Mr. SAXTON] but there is an element in this organization that are extremist, and they have used these bills, aforementioned, as weapons against people.

Why are we even having a substitute, or a bill in the first place? To me it is not the Clean Water Act, it is to come somewhere within logic of what reasonable men and women would have us to save the environment. However, that has not been the case. That is why I think both the substitute and the bill is to try and bring us somewhere back to the center.

If we take a look, I had 3 Russian generals come into my office a few months ago. I asked one of them what was the most treasured right that they had gained since they had their freedom. They said "Congressman, it is the right to own property."

The problem is, for every item that I read here, there are going to be items on the other side that are violated. I recognize that. However, for example, in private property rights, I personally believe it is wrong from environmentalists, often extreme groups, to go in and take on somebody's property, devalue that property, and then say that is fair market value. That is wrong. However, that has existed.

I think that is why these laws and why these substitutes and bills have been changed, they are trying to change the current act, because there have been those violations.

Mr. Chairman, I look at Mexico. We discussed here once about a boy that was lost for three days, and the helicopter could not land because he went into a wilderness area. Fish and Game would not allow the helicopter to land. That is ludicrous. That is stupid. However, those kinds of things are allowed to exist.

In California, we had homes where the people had asked if they could disk around there homes because of the fire. We have a lot of fires and earthquakes in California. They said "Can we disk around them?" They said "No, because it is an endangered species area." We lost 34 homes. The people that went ahead and did it and violated the law saved their homes. That is wrong, Mr. Chairman.

For each of those issues that I could talk about, about the violations, we look at the Colorado slag, we look at the pollution in the Great Lakes. Talk about the Chesapeake Bay, look how the Great Lakes have been cleaned up.

There are advantages to the current Clean Air Act and Clean Water Act and endangered species. However, something has to bring the legislation to where logical decisions can be made, not by regulators. Government officials run amok, whether it is an RTC or whether it is an environmental group, they run amok. We have to change that.

California, the No. 1 economic product in California is agriculture. Yet, agriculture in the past, pesticides go into the lakes and into the rivers and into our oceans, where the gentleman from California [Mr. FILNER] is from. Down there in the district, we need to clear that up. It is not so much our outfall in sewage, it is the Tijuana raw sewage that is coming out of Mexico that is polluting our beaches. We need to attend to that.

I think there is an honest attempt for the Members in favor of the substitute and the Members in favor of the bill to resolve not the Clean Air Act, but to resolve logical decisions. That has not existed in the past.

Mr. SAXTON. Mr. Chairman, I yield 5 minutes to the gentlewoman from Maryland [Mrs. MORELLA].

Mrs. MORELLA. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I rise today in strong support of the Saxton-Boehlert-Roemer substitute and in opposition to H.R. 961 as reported. Members know I feel strongly, because I waited all afternoon to speak.

Mr. Chairman, among all of our environmental protection efforts, the Clean Water Act stands as a shining success story and as an international model.

In the twenty years of this program, the quality of our rivers, streams, and coastal waters has dramatically improved. The percentage of waters failing to meet swimming safety criteria has fallen. Ohio's Cuyahoga River, which once attracted firemen, now attracts fishermen. And our own Chesapeake Bay is making tough, halting steps on the long road to recovery.

Protection of wetlands is crucial both to the protection of our wildlife and the maintenance of our water quality. Wetlands are vital biological filters, removing sediments and pollutants that would otherwise suffocate our waters. Over half of the nation's wetlands have disappeared since the time of Columbus. Recognizing the importance of this resource, President

Bush pledged "no net loss of wetlands" during his administration.

Sadly, we are falling short of even this modest and reasonable goal. During the 1980's, despite the scientific recognition of the value of wetlands, our own Chesapeake Bay lost wetlands at the rate of 8 acres a day. No resource can long endure such depredation.

The Chesapeake Bay remains in a precarious state. Our oyster and shad fisheries are virtually gone; blue crab, the region's premier catch, has fallen into precipitous decline.

We have made great progress in other areas: point-source discharges of phosphorus to the Bay have fallen off by 70 percent and we are beginning to make strides controlling nitrogen contamination.

Those positive strides are directly attributable to the Nation's aggressive Clean Water Program. Much more needs to be done, particularly in the control of agricultural and municipal runoff. I am disappointed that H.R. 961 would allow decades of delay before we seriously address these problems.

Furthermore, the redefinition of wetlands under the Committee bill will remove vast areas from the scope of legal protections. I stood here on the floor two months ago as we debated risk assessment, and one principle we all agreed on was the need for the best possible science in formulating our environmental strategies.

We now have a situation where, at the expressed request of Congress, the National Academy has performed an exhaustive scientific analysis of the wetlands issue. Their conclusions are antithetical to those in H.R. 961. Are we in Congress, committed to good science, to ignore the verdict of the nation's foremost scientific advisory body?

H.R. 961 would divide currently protected wetlands into three categories. Wetlands at the lower end would effectively lose protection. I am reminded with a hint of irony of those famous words of Julius Caesar: "Gaul is divided in three parts." Division of the province into three sections was the prelude to subjugation.

H.R. 961 would undermine the health of the Bay, and, in the process, undermine the health and economic well-being of the residents of this region. I opposed private property takings legislation before; I will oppose it now where it applied to the preservation of wetlands.

There have been costs for this progress, but the benefits have been immeasurable. It would be unfortunate indeed if this Congress were to succumb to the whim of the moment and undercut this crown jewel of our nation's environmental efforts. I urge defeat of H.R. 961 and passage of the bipartisan substitute.

□ 1900

Mr. SHUSTER. Mr. Chairman, I yield 5 minutes to the gentleman from Arizona [Mr. HAYWORTH].

Mr. HAYWORTH. I thank the gentleman from Pennsylvania for yielding me the time.

Mr. Chairman, I would commend to the attention of my colleagues words from the Mesa Tribune in March of this year. Mark Flatten and Chris Coppola write the article. "In Arizona, sewage must be treated to drinking quality standards before discharged so that it won't harm phantom fish in a dry river."

The passage points up the challenge we face, the absurdity of regulation run amuck. For that reason, I stand in opposition to the amendment and in strong support of H.R. 961.

I have good friends who sponsor this amendment. I have no doubt to the nobility and the aim and the intent of the amendment. Here is my problem, colleagues. It seems to me that though the amendment is born of a noble impulse, it assumes the worst about duly elected representatives at the State level.

In other words, the assumption is that our friends in the State legislatures, that our friends in local and county government cannot move effectively to solve problems on their own. Indeed, the overwhelming sentiment and the underlying philosophy of the first 100 days of this new Congress was this concept: That those on the front lines can best fight the battles.

I am pleased to hear of the strides here on the East Coast. I am pleased to hear of the improvements, and indeed no one in this body, I believe, disputes the notion of the need a quarter century ago to stop and take stock of pollution and move toward meaningful conservation. But the problem comes, as I see it, in making the Federal Government always the instrument, and indeed making the unelected the final arbiters of what measures should be taken.

With that, I oppose the amendment, and I stand in strong support of H.R. 961.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. HAYWORTH. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the gentleman points out some legitimate concerns, reading from that Arizona publication. I wish to point out that in title III, section 301, entitled "Arid Areas," we address the legitimate concern you have. So the substitute does address that legitimate concern.

I thank my colleague for yielding.

Mr. HAYWORTH. I thank my friend.

Mr. SAXTON. Mr. Chairman, I yield 5 minutes to the gentleman from Delaware [Mr. CASTLE].

Mr. CASTLE. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in support of the Boehlert substitute here today. I would like to say why because I have a great deal of respect for the sponsor of the bill itself.

Having worked in this area for 20 years in the State of Delaware, I have seen that of all the pieces of environmental legislation which I think have actually worked, that the Clean Water Act probably stands at the top. I believe that the substitute does more to support that original piece of legislation, but correcting or remedying some of the problems which existed, than does the actual bill before us.

I believe that the substitute deals with the problems of wetlands, it gives more control to the States, but it does not give up the wetlands which are a valuable source of nutrients, as we know. I believe that it preserves the Coastal Zone Management Act, which is extremely important.

We have the Delaware River and Bay in my State, and I cannot tell you how important that is to the environment of our State. The revolving loan fund is extremely important for infrastructure as far as water is concerned. The financial and technical needs of the farmers are something else that sometimes we overlook. That is a very dramatic problem that they are dealing with, and they are right on the edge of the water in many instances.

The stormwater program, which would be repealed by H.R. 961, is of vital importance. We have had to close our oceans, I have had to actually close down swimming in Rehoboth Beach, DE, because of stormwater runoff, and the same thing is true of nonpoint source pollution. It is the exact same thing. We get to the point where we actually have to close swimming and take other measures because of pollution caused by nonpoint source pollution. It does not have what I consider to be an onerous takings provision.

For all of those reasons, but mostly because ultimately when you are managing these kinds of programs and trying to create clean water in your jurisdiction, you have to take all these different aspects and you have to add them all up.

In the aggregate, eventually you begin to clean your water and you get rid of the burning rivers and you get rid of where the fish could not live. Eventually you get to the point where waters are swimmable, and you get to the point where our children can enjoy it for some period of time into their futures.

For all those reasons, I do support the bipartisan substitute. I would encourage all of us to do it.

Mr. SAXTON. Mr. Chairman, the gentleman from New York [Mr. BOEHLERT] is going to be our last speaker. If I may, Mr. Chairman, I wish to yield whatever time the gentleman from Delaware [Mr. CASTLE] did not use, in

addition to the 5 minutes, to the gentleman from New York [Mr. BOEHLERT].

The CHAIRMAN. The gentleman from New Jersey [Mr. SAXTON] has 16 minutes remaining.

Mr. SHUSTER. Mr. Chairman, does the gentleman not have two more speakers?

The CHAIRMAN. The gentleman from Pennsylvania has 19½ minutes. The gentleman may divide that as he wishes with his speakers.

Mr. SHUSTER. Mr. Chairman, I have two more speakers.

The CHAIRMAN. But the gentleman has 19½ minutes left under the agreement.

Mr. SHUSTER. I would ask the Chair to recalculate. I do not think that is quite accurate.

The CHAIRMAN. To the gentleman from Pennsylvania, I would say, if he has two more speakers remaining, under the agreement, as I understand it, each speaker has 5 minutes.

Mr. SHUSTER. So we have 5 minutes apiece. That is 10 minutes on our side.

The CHAIRMAN. If that is what the gentleman from Pennsylvania is asking for, that is fine.

The gentleman from New Jersey is requesting that the gentleman from New York close; is that correct? The gentleman has no more speakers?

Mr. SHUSTER. He would close on their side. I have the right to close, but he would have 5 minutes plus whatever minutes are left over, a total of 8 minutes.

PARLIAMENTARY INQUIRY

Mr. SHUSTER. Mr. Chairman, if I might, let me put this in the form of a parliamentary inquiry.

My understanding, then, is that on our side we have a total of 10 minutes. I am going to next yield 5 minutes to the gentleman from Louisiana [Mr. HAYES]. Then the gentleman from New York [Mr. BOEHLERT] will be recognized for his 5 minutes, plus the 3 that has been yielded, so he will have 8 minutes to close on his side. Then I will close the debate for 5 minutes. That is my understanding of the parliamentary situation. Is that accurate?

The CHAIRMAN. Pursuant to the agreement made earlier, the gentleman still has 19½ minutes remaining. After his second speaker, he may yield back the balance of his time if he wishes.

Mr. SHUSTER. I would say, then, Mr. Chairman, that I think our agreement is that we will both yield back our time, so we will take a total of 10 minutes and the gentleman from New York [Mr. BOEHLERT] will take a total of 8 minutes, so there will be a total of 18 minutes used.

Mr. ROEMER. Mr. Chairman, I ask unanimous consent that we could reclaim some of the time that was yielded back. We have the gentleman from New York [Mr. BOEHLERT] who wants to close. However, we have the gentleman from South Carolina [Mr. SPRATT], and I would ask if we could give 2 minutes to the gentleman from South Carolina [Mr. SPRATT].

Mr. SHUSTER. I do not object to the 3 minutes, Mr. Chairman, but our agreement is that we will have 10 minutes left and the other side will have 5 plus 3, or 8 minutes left.

Mr. ROEMER. Eight minutes is fine.

The CHAIRMAN. Without objection, so ordered.

There was no objection.

Mr. SHUSTER. Mr. Chairman, I yield 5 minutes to the gentleman from Louisiana [Mr. HAYES].

Mr. HAYES. Mr. Chairman, this has been a wonderful debate. The gentleman from Louisiana [Mr. TAUZIN] and I have particularly enjoyed it because it was so informative for us to have an opportunity to learn what we learned today.

Starting early this afternoon, we learned that the bill that he and I had been working on for over 10 years, even though we sent over 900 copies of what was then H.R. 1330 to every environmental organization, every Member of Congress and everyone else when it was first filed in 1987, his property rights bill that was filed in the mid-1980's that has been discussed in just about every forum possible was in fact done in the dead of night, in seclusion, rushed without hearings.

He and I have attended between us 32 hearings on this subject in the time he and I have been in Congress and yet that is rushed through.

So what are we told to do? We are told by certain elements of leadership to vote against that product because it was not aired to the fullest degree. So what are we supposed to vote for?

Well, we have one speaker after another saying "Well, it's obvious, you vote for the substitute," that was released at a press conference two days ago that is 250 pages long, that has never had one hearing on one section, that has no idea by whom it was written, did not participate in a committee or subcommittee process, and that is open and above board.

The gentleman from Louisiana [Mr. TAUZIN] and I, and we are referred to on occasion as sneaky, but this elevates the term to a whole new level. And then we are told an even more extraordinary thing.

We are told, "Well, wait for the science. Wait for the science." We have had 16 different scientific studies in the last decade. We waited for the study that is not before us and has been mentioned on several occasions 19 months after its due date.

The results of that study, by the way, absolutely no one has mentioned clearly. After 3 years and over $1 million, a group of eminent scientists, paid by the EPA, concluded that the 1987 manual written by the EPA was the thing to do. I am shocked at the conclusion.

What is incredible to me is it took 3 years to figure out who was footing the bill so you better do what they told you in the first place, and that to me is the biggest, biggest element of surprise.

But even more so, I am told that we should examine this study, even though it says do what you did in 1987 that did not work, caused everyone in America to complain about it, and required that you are on the floor here today amending it, even though that is the conclusion they have, we should take time to study the document because it was not released until 6 p.m. on Tuesday, for some people.

For others, it was released days earlier in order to allow those people who agreed with the study that said 1987 was the right thing to do after the cost of $1 million, to give them additional opportunity to prepare to place it in legislation in the above-board and open process.

My copy of it says "Advance Copy Not To Be Released Till 6 p.m. on Tuesday."

That does not sound scientific, does it? Unless of course we include the field of political science in which I got my degree.

The next extraordinary thing that I consider before us is the most unusual dissertation of all, and that is on individual rights. "We do not need to change the law. The law is working well."

I have heard some unusual examples of it. I heard about a stadium in Cleveland as a success story, even though the adjoining property houses a museum that a former Congressman from Cleveland had to get a waiver placed into a piece of legislation before my committee because it had been declared navigable. The successful stadium is in the jurisdictional waters of the United States unless your Congressman had enough influence to get it out.

I think the rest of America that does not have that individual influence to effect a piece of legislation ought to get the same break the gentleman from Pennsylvania [Mr. SHUSTER] is trying to give everybody.

I heard another example about State regulators in South Carolina saying we are for the substitute. Understand, South Carolina is the same State where Mr. Lucas had to go all the way to the U.S. Supreme Court to get his rights finally preserved by the court.

You know what they said? They said, "Mr. Lucas, South Carolina is wrong, their State regulators are wrong, their zone management is wrong, you were cheated, and we're going to give you over $1 million."

□ 1915

You know what the State did to pay the judgment? Since they got the property, they sold it to someone to build a

house, which is what Lucas wanted to do in the first place. So when they needed the money they did precisely what they told him not to do.

And I am supposed to be told this is the system that works? I am supposed to support a bipartisan substitute?

We had a committee vote in which half of the Democrats, overwhelming majority of Republicans voted for the bill of the gentleman from Pennsylvania [Mr. SHUSTER]. If that is not bipartisan I do not know what is. So I am going to support the bipartisan measure and oppose the substitute, which remains to be seen where the chips may fall in bipartisanship.

Mr. SAXTON. Mr. Chairman, I yield the remainder of our time to the gentleman from New York [Mr. BOEHLERT].

Mr. BOEHLERT. Mr. Chairman, I yield to my colleague, the gentleman from South Carolina [Mr. SPRATT].

Mr. SPRATT. Mr. Chairman, I thank the gentleman for yielding. I would like to rise in support of the Saxton-Boehlert-Roemer substitute. I support amending section 404 of the Clean Water Act. The district I represent is largely rural, and farmers in my district have real concerns about the way in which agricultural wetlands have been regulated, and I understand that because I own a farm myself and it has about 200 or 300 acres of bottom lands on it. I understand farmers' concerns about being overridden by the Corps of Engineers.

At the same time, in my State in particular, the gentleman who was just in the well referred to the State of South Carolina. We adopted a Beachfront Management Act to control the development of our beachfront. We have a Coastal Zone Management Act because we recognize the benefits of wetlands to one of the largest industries in our State, the tourism industry, a large and growing part of our economy, and our environment will benefit and what wetlands yield for water quality helps tourism, home owners, and farmers alike.

Title VIII, section 8 contains the language that is essentially the same as that the gentleman who just spoke offered in H.R. 1330 in the last Congress. I did not cosponsor it then. I do not cosponsor it now. I do not support it now because I think a national classification system as mandated in the bill is not workable. It mandates a national system for classifying it. The Corps is instructed to classify the land of any property owner who requests it and is required to get it done in 10 years' time. Not one single organization or person that I have heard has explained how the Corps, already overburdened, will be able to classify every single wetland in 10 years. Nor have I heard why all of a sudden property owners want to welcome the Corps of Engineers onto their land to decide whether or not it contains wetlands.

Mr. Chairman, the Saxton-Boehlert-Roemer substitute is a good piece of work. It is reform without going too far. I wholeheartedly support it and urge others to do likewise. I thank the gentleman for yielding.

Mr. BOEHLERT. Mr. Chairman, I thank my colleague.

Mr. Chairman, now we come to the moment of decision. The vote on our amendment presents this House with a clear, stark question: Are we truly for reform of the Clean Water Act, or is the word reform simply an alias to mask the evisceration of our Nation's most successful environmental statute?

That is the choice. If what Members want is to retreat on the Clean Water Act, support H.R. 961 as reported. However, if what they want is true reform of the Clean Water Act, this substitute provides it.

Let me give some of the details that highlight the difference between reform and repeal.

Let us look at the wetlands provisions. Are there problems with the wetlands provisions of current law? Of course there are. My district has wetlands, including agricultural wetlands. I know there are problems. How would H.R. 961 propose to deal with these problems? By allowing the wholesale elimination of wetlands, wetlands that purify our waters, and prevent flooding.

Is that a remedy?

And on what basis does H.R. 961 allow the destruction of these wetlands? Certainly not on a scientific basis. The National Academy of Sciences' distinguished panel on this issue has stated that the definitions in H.R. 961 have no scientific basis, and with all due respect to my distinguished colleague from Louisiana [Mr. HAYES] let me point out that these eminent scientists are not paid by the Environmental Protection Agency. There services are on a voluntary basis. The Environmental Protection Agency only pays the National Academy of Sciences for printing and distribution of the report.

The wetlands provisions of H.R. 961 would not reform current law. They would reform the surface of the Earth by allowing the destruction of precious wetlands.

Our substitute on the other hand propose true reform. Where do our wetlands reform provisions come from? From the National Governors' Association, not exactly a bunch of tree-huggers. We give the States more control over the regulation of there own wetlands, local control, not Federal control. We take a sensible, middle-ground approach, State control to allow more sensible regulation without threatening essential wetland protection.

Another example of real reform in our bill, control of coastal zone nonpoint source pollution. H.R. 961 would simply repeal the current program of protection. On what basis? None, really. You do not have to be a scientist to understand the problem runoff causes in coastal areas. All you have to be is someone who has not been able to go to a beach on a hot summer day because the beach was closed because of pollution; 10,000 beaches in America last year. Eliminating the coastal zone program is not reform. It would allow toxic substances to reform our Nation's beaches.

But are there problems with current law? Of course there are. Our substitute would take care of those problems with real reform.

Where did our proposal come from? From the Coastal States Organization, which represents 30 Governors of coastal States. Again not a bunch of environmental radicals. Here again we allow more State control to eliminate red tape while maintaining environmental protection.

And what about stormwater runoff? Same situation. H.R. 961 would just pretend that stormwater does not cause pollution, despite all of the scientific evidence to the contrary. Are there problems with current stormwater law? Of course there are. We offer real reform. We create an exemption for cities with populations under 100,000 and for light industry. Regulations of these entities may not be worth the cost of compliance, and we recognize it. But we do not allow larger cities and major industries to just return to using our Nation's lakes and rivers as sewers.

What about point source pollution? We cannot ignore this. More than 40 percent of the Nation's waters are still impaired, so in this case we do retain the provisions of current law.

And what about the many other areas H.R. 961 would affect? In those areas 70 percent of the bill, our alternative, 70 percent of that bill retains the language of H.R. 961. There are many areas of agreement.

Where H.R. 961 offers real reform, we adopt its provision. Where H.R. 961 raises the banner of reform to mask environmental degradation, we substitute real reform for sleight of hand.

I urge all of my colleagues to support the bipartisan Saxton-Roemer-Boehlert amendment. It would accomplish exactly what the public is seeking. Our substitute will prevent environmental damage while lessening the burden of regulation.

Our amendment substitutes pragmatism for ideology. Our amendment substitutes reform of regulation for its repeal. Our amendment substitutes hope for the future, not the abandonment of future generations.

I urge passage of the bipartisan substitute alternative.

Mr. SHUSTER. Mr. Chairman, I yield such time as he may consume to the gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Mr. Chairman, in both my committees, I have heard from the EPA and specifically from EPA Administrator Carol Browner that they need our help in using sound scientific research to make policy decisions. Many of the complaints I have heard about the EPA over the years is that there seems to be, to put it mildly, a poor match between their decisionmaking and their research. Now I'm not seeking to rake EPA over the coals one more time here, but to offer positive steps to solve the problem. Many of my colleagues agree that it is time to put our money where their mouth is. I offered an amendment in subcommittee, later revised in the full committee and again in consultation with Science Committee chairman Bob Walker's input in the Shuster en-bloc amendment here today, to make sure that in these tight budget times we do not lose sight of the fact that water quality research remains a vital function of how the federal government can participate in making our environment better.

But more importantly, my amendment has the intent not to fund the continued "paper-pushing research" of Washington bureaucrats, but to invest in cooperative efforts of localities and small municipalities, counties, and cities to find solutions to their clean water challenges. Specifically, asking EPA to use nonprofit and private organizations with expertise in water quality research, combined with the technical assistance necessary to get that information into the hands of rural and small town water authorities, will give us an independent body of information to make more sound decisions and achieve cleaner water.

I'd like to include in the RECORD a letter I have received from one such independent organization, stating the need for funding such research.

WATER ENVIRONMENT
RESEARCH FOUNDATION,
Alexandria, VA, March 29, 1995.

Mr. BOB CASTRO,
Legislative Assistant, Office of Congressman Zack Wamp, Washington, DC.

DEAR BOB: Thanks for the news that Congressman Wamp is supportive of legislation supportive of water quality research. We believe that increased funding on the national level is critical to ensure:

1. Science base for environmental decisionmaking. Wastewater utilities are concerned with "unfounded mandates". They believe that improving water quality is not a mandate, but a responsibility. Water quality professionals seek assurance, through sound science, that public money spent on water quality improvement programs achieve the desired results.

2. Simply stated, the technology of today is based upon the research of the past. The promise of the future is based upon the research of today.

3. The research needs focus is changing. In the past water quality concerns focused on fishable/swimmable waters and the technical issues of volume of wastewater, suspended solids, organics, and pathogens. The new focus is on health impacts, risk, watersheds, conservation, and others. New technologies are needed to focus on nutrients, toxics, residuals, air, reuse, and prevention.

Thank you for this opportunity to provide additional input. If there is any additional information required, please don't hesitate to contact me.

Sincerely,

GLENN REINHARDT,
Executive Director.

Mr. SHUSTER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, our friends are trying to represent that this substitute is 70 percent of the committee bill. That simply is not true. The substitute guts the committee bill which passed overwhelmingly on a bipartisan basis in committee.

They are trying to portray this substitute as having widespread support. Does the National Governors' Association support it? No. Does the National League of Cities support it? No. Do the State water pollution control officials support it? No. Does the Conference of Mayors support it? No. Do the agricultural groups support it? No. Does the NFIB support it? Not only do they not support it, they list this vote as a key vote as they measure our performance in the Congress. In writing, as we have demonstrated earlier here today, all of these organizations support the committee bill.

In fact, the nonpoint source, the substitute really does damage to what we do in the committee bill. The committee bill requires the States to develop comprehensive nonpoint source management plans. If the States do not develop the programs, the bill requires the EPA to do it.

As far as coastal management is concerned, we do not eliminate coastal management. We fold it into a unified nonpoint source program. So we eliminate the duplicative regulation of nonpoint sources of pollution.

The Boehlert substitute actually will continue this duplicative regulation on behalf of the coastal zone management officials, the bureaucrats who of course want to keep their separate offices and their separate funding.

On stormwater, one of the most glaring omissions in the Boehlert substitute is the failure to address the existing stormwater permitting program.

On unfunded mandates, during the debate on unfunded mandates cited most often were the greatest burdens on local government from the Clean Water Act, and indeed, the Boehlert substitute does not include any flexibility with regard to the unfunded mandates.

On risk assessment and cost-benefit analysis, get this, the Boehlert substitute incredibly completely wiped out any risk-assessment or benefit-cost requirement for Clean Water Act regulations. And on wetlands, this is absolutely extraordinary too. The Boehlert substitute not only does not streamline or reform the 404 program, but it actually adds new regulatory requirements into the existing law, so if you like the wetlands provisions that your people are living under today, you will love what they are going to have to live with under the Boehlert substitute. And yes, we heard from our friends in New Jersey about the loss of wetlands. I would say to my good friends in New Jersey or any other State, your State can pass whatever wetlands regulations they want to pass. If you want tougher wetlands regulations, pass them for your State. Just do not impose your view of life on the other 49 States.

Overall, this substitute guts the bill. If the election in November was about anything, it was about returning back to the States the decisionmaking process on so many of the regulations that, indeed, we must live under.

So I would urge my colleagues to support the bipartisan bill that passed the committee overwhelmingly, that passed the subcommittee 19 to 5, passed the full committee 42 to 19. Overwhelming bipartisan support.

If this substitute is adopted, we will be gutting reform of clean water, and we will have to go home and tell our people, tell our farmers, tell our homeowners, tell our small business people we are sorry, we have not really reformed those problems that you have come and told us about. You are going to have to live with the same old EPA, Washington-knows-best mentality.

So I urge Members to defeat this substitute and support the bill, which is true, balanced environmental reform.

Mr. HOYER. I rise today in support of the Boehlert-Saxton-Roemer substitute. This substitute is a reasonable and commonsense reform of the Clean Water Act.

Clearly, the present Clean Water Act needs to be reformed. As the reauthorization debate began there were several different approaches to how to best protect our Nation's lakes, streams, estuaries, and coastal waters.

This substitute will provide relief to farmers, industry, and individual landowners from costly and time-consuming mandates. It will also, however, continue many of the programs and provisions which have made the Clean Water Act one of our Nation's most effective environmental statutes.

The Chesapeake Bay, much of which borders my district, is the largest and most productive estuary in North America. Maryland, Virginia, and Pennsylvania experienced firsthand the bay's low point in the mid-1970's.

The habitat, especially the blue crab population, water quality, and the overall economy of the Bay were at an all time low.

Mr. Chairman, thanks to the Clean Water Act, the Bay and its industries made a remarkable comeback. The Chesapeake Bay Program, in conjunction with the Clean Water Act requirements, led the Bay's restoration.

Today, watermen in my district in southern Maryland, earn a living on the Chesapeake Bay. Previously, we have been up to the task of restoring the Bay and protecting their livelihood, and today their families are relying on us to continue our efforts.

I am pleased that the substitute provides funding for this successful partnership between State, local, and Federal Governments.

The substitute also continues the Coastal Zone Management Program which was initiated to implement coastal nonpoint pollution and control programs.

Nonpoint source pollution today provides us with our greatest environmental challenge, as it is the most difficult to detect and control.

Over 10,000 beaches were closed in the last 5 years due to pollution. Sixteen counties, in my home State of Maryland, make up the coastal zone, well over 65 percent of the State.

This substitute recognizes that our Nation's $400 billion a year travel and tourism industry and $55 billion a year fishing industry are directly reliant upon our coasts and continues our commitment to the Coastal Zone Program.

One of the more controversial aspects of clean water reauthorization has been wetlands reform. Clearly, the Federal Government must continue its commitment and environmental obligations to protect our Nations wetlands.

At the same time, however, wetlands policies have resulted in substantial burdens on our Nations farmers, industry, and individual landowners.

The substitute simplifies and expedites the wetlands permitting process by implementing a plan submitted by the National Governor's Association.

The NGA approached Congressman BOEHLERT in March with their proposal, as they deemed the provisions on wetlands contained in H.R. 961 to be inconsistent with the recommendations of the Nation's Governors.

This proposal will give more authority on wetlands management to the States where action can be more accurate, appropriate, and prompt. It will also make many needed administrative and regulatory changes in the way the system is run.

Mr. Chairman, most Members of this body agree that there are administrative and regulatory problems with the Clean Water Act.

However, the same percentage of Members would also agree about its importance and environmental successes.

This substitute will continue to provide environmental safeguards and promote programs to continue pollution cleanup and prevention well into the 21st century, while also providing regulatory relief to farmers, landowners, and industry.

I urge support for the Boehlert-Saxton-Roemer substitute and support smart, environmentally sound, commonsense reform to the Clean Water Act.

Mr. Chairman, I insert the following correspondence for the RECORD:

NATIONAL GOVERNORS ASSOCIATION,
March 28, 1995.

Hon. SHERWOOD BOEHLERT,
Chairman, Subcommittee on Water Resources and Environment, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We have been greatly encouraged by your willingness, as well as that of Rep. Shuster and others in the bipartisan group, to include states in the development of H.R. 961. We support the intent of that bill to provide substantially greater flexibility to states and local governments in our efforts to protect water quality. We support the Water Resources and Environment Subcommittee in its efforts to expeditiously move this comprehensive legislation reforming the Clean Water Act.

We have not yet completed our review of all provisions of the bill. However, as you know, the provisions on wetlands are not consistent with the recommendations of the nation's Governors. We raised concerns over this issue in our March 22 letter to Rep. Shuster (copy attached). In response to your request, we enclose an alternative approach to wetlands reform developed by the Association of State Wetland Managers, based on NGA policy recommendations. This proposal reflects the state perspective on wetlands management and we urge your consideration of this proposal as a substitute for the wetlands provisions of H.R. 961.

We look forward to working with you in advancing this important legislation, and will be in touch shortly concerning other issues.

Sincerely,

Governor MIKE LOWRY,
Chair, Committee on Natural Resources.
Gov. TERRY E. BRANSTAD,
Vice Chair, Committee on Natural Resources.

Mr. SHAYS. Mr. Chairman, I rise in strong opposition to H.R. 961, the Clean Water Act Amendments of 1995, and in support of the Saxton-Boehlert substitute to the bill.

Maintaining a strong Clean Water Act is essential for Connecticut and the Nation. Unfortunately, H.R. 961 does not build on the success the Clean Water Act has had over the past 23 years. Instead, it rolls back standards, loosens regulations and weakens protections.

Under H.R. 961, 60 to 80 percent of our Nation's wetlands would be either removed from any level of protection or destroyed. Industrial pollution standards would be significantly weakened, allowing discharge of industrial waste into lakes, rivers, and harbors. The entire coastal zone nonpoint source pollution control program would be repealed, and the Federal Government would be saddled with payments of more than $15 billion as a result of illogical and unfair takings provisions.

While it is important the Clean Water Act is reauthorized, it must not be at the environmental cost that would result from passage of H.R. 961. The Saxton-Boehlert substitute is a sensible alternative that makes necessary modifications without repealing or rolling back important protections that have contributed to the Clean Water Act's enormous success.

Specifically, the substitute makes improvements over H.R. 961 in four important areas: wetlands protection, storm water management, coastal water pollution, and nonpoint source pollution.

The Saxton-Boehlert substitute recognizes that there have been problems with the wetlands permitting process. But unlike title VIII of H.R. 961, the substitute streamlines the permitting process without leaving millions of acres of wetlands unprotected. It utilizes recommendations made by the National Governors Association to simplify and expedite the wetlands permitting process without establishing a bureaucratic classification system.

Wetlands serve as a breeding ground for fish, are critical habitat for wildlife and are necessary for most migratory birds. They are critical to Connecticut, where they also serve to filter out nutrients and toxics that would otherwise end up in Long Island Sound. The sound is already suffering from nitrogen overload that has resulted in hypoxia—low levels of dissolved oxygen which cause significant, adverse ecological effects in the bottom water habitats of the sound. Local, State, and Federal Government resources are being spent to reduce nitrogen levels in the sound, and it doesn't make sense to counter these efforts by removing wetlands from protection.

H.R. 961 would repeal the entire stormwater program in the Clean Water Act. This is unnecessary and harmful to health and safety. Stormwater is one of our most significant water pollution programs, but H.R. 961 would allow it to be freely discharged into our waters.

H.R. 961 would also repeal the coastal pollution control program. Over the past 5 years more than 10,000 beaches in the United States have been closed because of coastal water pollution. Over one-third of all shellfish beds in the United States are closed or threatened by water pollution. Connecticut is a world leader in oyster production, and this industry is dependent on clean water for prosperity. Repealing the coastal pollution program is harmful for Connecticut economically and environmentally.

The majority of coastal water quality impairment is the result of nonpoint sources of pollution, another major contributor to problems in Long Island Sound. In fact, nonpoint source pollution impairs more water bodies nationwide than any other pollution source, resulting in beach closings and declining fisheries. It threatens drinking water quality and impacts millions of coastal residents. Yet H.R. 961 loosens regulations for nonpoint source pollution. While the legislation authorizes funds for polluted runoff programs, it doesn't require accountability for the moneys it provides.

Clean water is essential to the economy, health, and livelihood of everyone, not only in my State of Connecticut, but in the entire country. We have made solid progress in clean water protection since enactment of the act in 1972. As we look for improvements to the act and solutions to the challenges that lie ahead, we must be both ambitious and thoughtful. We must seek rational policies that make sense. The Saxton-Boehlert substitute, not H.R. 961, achieves that goal.

Mr. PORTER. Mr. Chairman, I rise to urge my colleagues to support the substitute to H.R. 961 offered by Representatives SAXTON, BOEHLERT, and ROEMER. This substitute will vastly improve what is now a flawed bill.

Mr. Chairman, the Clean Water Act is one of our most effective environmental laws. It has significantly improved the quality of our Nation's rivers, streams and lakes over the past 25 years.

While the law has been extremely successful, there are significant problems with the Clean Water Act as well. Like many of our environmental laws, there have been instances of regulatory overkill under the act. That's why the Saxton-Boehlert-Roemer substitute incorporates 70 percent of H.R. 961's provisions. But the remainder of H.R. 961's provisions go too far.

H.R. 961 removes over 60 percent of our Nation's remaining wetlands from any level of protection. The destruction of these wetlands would increase flooding, decrease the supply

of fresh water and lead to a decline in the fishing and tourism industries, all of which are concerns to my district.

The bill also includes takings provisions which would require the Federal Government to compensate a landowner when a portion of his or her property is devalued by 20 percent because of wetlands regulations. This provision could cost the Federal Government billions of dollars. As a fiscal conservative, I cannot support H.R. 961 in its current form because of this provision alone.

H.R. 961 would also repeal the entire coastal zone nonpoint source pollution program. When more than 10,000 beaches in the United States have been closed over the past 5 years because of coastal water pollution, it simply does not make sense to weaken efforts to limit nonpoint source pollution affecting these areas.

The Saxton-Boehlert-Roemer substitute is a reasonable approach to reauthorizing the Clean Water Act. It includes a proposal developed and endorsed by the National Governor's Association for protecting wetlands. This is a middle-ground approach which gives the States a greater say and more flexibility in protecting wetlands.

It also incorporates a proposal for addressing coastal nonpoint pollution developed by the Coastal States Organization. At a time when we are returning power to the States, we should respect the views of the 30 Governors representing the Coastal States Organization with regard to coastal zone protection.

I urge my colleagues to support the substitute. It is strong, sensible, environmentally sound and affordable.

The CHAIRMAN. The question is on the amendment in the nature of a substitute, as amended, offered by the gentleman from New York [Mr. SAXTON].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SAXTON. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 184, noes 242, not voting 8, as follows:

[Roll No. 312]

AYES—184

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barrett (WI)
Bass
Becerra
Beilenson
Bentsen
Berman
Bilbray
Boehlert
Bonior
Borski
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Castle
Clay
Clayton
Clyburn
Coleman
Collins (MI)
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Ehlers
Ehrlich
Engel
Eshoo
Evans
Farr
Fawell
Fields (LA)
Filner
Flake
Foglietta
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Goss
Green
Greenwood
Gutierrez
Hall (OH)
Hamilton
Hastings (FL)
Hinchey
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Kanjorski
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Klug
Kolbe
Lantos
Lazio
Levin
Lewis (GA)
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
Matsui
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Minge
Mink
Moran
Morella
Murtha
Nadler
Neal
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Owens
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Pastor
Payne (NJ)
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Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Saxton
Schroeder
Schumer
Scott
Serrano
Shaw
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
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Thompson
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Velazquez
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Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Williams
Wise
Wolf
Woolsey
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Wynn
Yates
Zimmer

NOES—242

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bateman
Bereuter
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Bonilla
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Brewster
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Brownback
Bryant (TN)
Bunn
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Callahan
Calvert
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Collins (GA)
Combest
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Davis
de la Garza
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Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Emerson
English
Ensign
Everett
Ewing
Fazio
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Franks (CT)
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gonzalez
Goodlatte
Goodling
Gordon
Graham
Gunderson
Gutknecht
Hall (TX)
Hancock
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Hastert
Hastings (WA)
Hayes
Hayworth
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Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Johnston
Jones
Kaptur
Kasich
Kim
King
Kingston
Knollenberg
LaFalce
LaHood
Largent
Latham
LaTourette
Laughlin
Leach
Lewis (CA)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
Longley
Lucas
Manzullo
Martinez
McCarthy
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Mineta
Molinari
Mollohan
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (MN)
Petri
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
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Radanovich
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Richardson
Riggs
Roberts
Rohrabacher
Rose
Roth
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Salmon
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Schaefer
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Seastrand
Sensenbrenner
Shadegg
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
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Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Traficant
Volkmer
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Young (AK)
Young (FL)
Zeliff

NOT VOTING—8

Bunning
Collins (IL)
Fattah
Harman
Lewis (KY)
Moakley
Peterson (FL)
Rogers

□ 1948

Mr. MCINTOSH and Mr. BISHOP changed their vote from "aye" to "no."

Mr. BILBRAY changed his vote from "no" to "aye."

So the amendment, in the nature of a substitute, as amended, was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to section 1?

The Clerk will designate section 2.

The text of section 2 is as follows:

SEC. 2. DEFINITION.

In this Act, the term "Administrator" means the Administrator of the Environmental Protection Agency.

The CHAIRMAN. Are there any amendments to section 2?

The Clerk will designate section 3.

The text of section 3 is as follows:

SEC. 3. AMENDMENT OF FEDERAL WATER POLLUTION CONTROL ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

The CHAIRMAN. The Clerk will now designate title I.

The text of title I is as follows:

TITLE I—RESEARCH AND RELATED PROGRAMS

SEC. 101. NATIONAL GOALS AND POLICIES.

(a) NONPOINT SOURCE POLLUTION; STATE STRATEGIES.—Section 101(a) (33 U.S.C. 1251(a)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) in paragraph (7)—

(A) by inserting ", including public and private sector programs using economic incentives," after "programs";

(B) by inserting ", including stormwater," after "nonpoint sources of pollution" the first place it appears; and

(C) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(8) it is the national policy to support State efforts undertaken in consultation with tribal

and local governments to identify, prioritize, and implement water pollution prevention and control strategies;".

(b) ROLE OF STATE, TRIBAL, AND LOCAL GOVERNMENTS.—Section 101(a) is further amended by adding at the end the following:

"(9) it is the national policy to recognize, support, and enhance the role of State, tribal, and local governments in carrying out the provisions of this Act;".

(c) RECLAMATION AND REUSE.—

(1) RECLAMATION.—Section 101(a)(4) is amended by inserting after "works" the following: "and to reclaim waste water from municipal and industrial sources".

(2) BENEFICIAL REUSE.—Section 101(a) is further amended by adding at the end the following:

"(10) it is the national policy that beneficial reuse of waste water effluent and biosolids be encouraged to the fullest extent possible; and".

(d) WATER USE EFFICIENCY.—Section 101(a) is further amended by adding at the end the following:

"(11) it is the national policy that water use efficiency be encouraged to the fullest extent possible.".

(e) NET BENEFITS.—Section 101 is further amended by adding at the end the following:

"(h) NET BENEFITS.—It is the national policy that the development and implementation of water quality protection programs pursuant to this Act—

"(1) be based on scientifically objective and unbiased information concerning the nature and magnitude of risk; and

"(2) maximize net benefits to society in order to promote sound regulatory decisions and promote the rational and coherent allocation of society's limited resources.".

SEC. 102. RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION.

(a) NATIONAL PROGRAMS.—Section 104(a) (33 U.S.C. 1254(a)) is amended—

(1) by striking "and" at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting "; and"; and

(3) by adding at the end the following:

"(7) in cooperation with appropriate Federal, State, and local agencies, conduct, promote, and encourage to the maximum extent feasible, in watersheds that may be significantly affected by nonpoint sources of pollution, monitoring and measurement of water quality by means and methods that will help to identify the relative contributions of particular nonpoint sources.".

(b) GRANTS TO LOCAL GOVERNMENTS.—Section 104(b)(3) (33 U.S.C. 1254(b)(3)) is amended by inserting "local governments," after "interstate agencies,".

(c) TECHNICAL ASSISTANCE FOR RURAL AND SMALL TREATMENT WORKS.—Section 104(b) (33 U.S.C. 1254(b)) is amended—

(1) by striking "and" at the end of paragraph (6);

(2) by striking the period at the end of paragraph (7) and inserting a semicolon; and

(3) by adding at the end the following new paragraphs:

"(8) make grants to nonprofit organizations to provide technical assistance and training to rural and small publicly owned treatment works to enable such treatment works to achieve and maintain compliance with the requirements of this Act; and

"(9) disseminate information to rural, small, and disadvantaged communities with respect to the planning, design, construction, and operation of treatment works.".

(d) WASTEWATER TREATMENT IN IMPOVERISHED COMMUNITIES.—Section 104(q) (33 U.S.C. 1254(q)) is amended by adding at the end the following:

"(5) SMALL IMPOVERISHED COMMUNITIES.—

"(A) GRANTS.—The Administrator may make grants to States to provide assistance for planning, design, and construction of publicly owned treatment works to provide wastewater services to rural communities of 3,000 or less that are not currently served by any sewage collection or water treatment system and are severely economically disadvantaged, as determined by the Administrator.

"(B) AUTHORIZATION.—There is authorized to be appropriated to carry out this paragraph $50,000,000 per fiscal year for fiscal years 1996 through 2000.".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 104(u) (33 U.S.C. 1254(u)) is amended—

(1) by striking "and" before "(6)"; and

(2) by inserting before the period at the end the following: "; and (7) not to exceed $50,000,000 per fiscal year for each of fiscal years 1996 through 2000 for carrying out the provisions of subsections (b)(3), (b)(8), and (b)(9), except that not less than 20 percent of the sums appropriated pursuant to this clause shall be available for carrying out the provisions of subsections (b)(8) and (b)(9)".

SEC. 103. STATE MANAGEMENT ASSISTANCE.

Section 106(a) (33 U.S.C. 1256(a)) is amended—

(1) by striking "and" before "$75,000,000";

(2) by inserting after "1990" the following: ", such sums as may be necessary for each of fiscal years 1991 through 1995, and $150,000,000 per fiscal year for each of fiscal years 1996 through 2000"; and

(3) by adding at the end the following: "States or interstate agencies receiving grants under this section may use such funds to finance, with other States or interstate agencies, studies and projects on interstate issues relating to such programs.".

SEC. 104. MINE WATER POLLUTION CONTROL.

Section 107 (33 U.S.C. 1257) is amended to read as follows:

"SEC. 107. MINE WATER POLLUTION CONTROL.

"(a) ACIDIC AND OTHER TOXIC MINE DRAINAGE.—The Administrator shall establish a program to demonstrate the efficacy of measures for abatement of the causes and treatment of the effects of acidic and other toxic mine drainage within qualified hydrologic units affected by past coal mining practices for the purpose of restoring the biological integrity of waters within such units.

"(b) GRANTS.—

"(1) IN GENERAL.—Any State or Indian tribe may apply to the Administrator for a grant for any project which provides for abatement of the causes or treatment of the effects of acidic or other toxic mine drainage within a qualified hydrologic unit affected by past coal mining practices.

"(2) APPLICATION REQUIREMENTS.—An application submitted to the Administrator under this section shall include each of the following:

"(A) An identification of the qualified hydrologic unit.

"(B) A description of the extent to which acidic or other toxic mine drainage is affecting the water quality and biological resources within the hydrologic unit.

"(C) An identification of the sources of acidic or other toxic mine drainage within the hydrologic unit.

"(D) An identification of the project and the measures proposed to be undertaken to abate the causes or treat the effects of acidic or other toxic mine drainage within the hydrologic unit.

"(E) The cost of undertaking the proposed abatement or treatment measures.

"(c) FEDERAL SHARE.—

"(1) IN GENERAL.—The Federal share of the cost of a project receiving grant assistance under this section shall be 50 percent.

"(2) LANDS, EASEMENTS, AND RIGHTS-OF-WAY.—Contributions of lands, easements, and rights-of-way shall be credited toward the non-Federal share of the cost of a project under this section but not in an amount exceeding 25 percent of the total project cost.

"(3) OPERATION AND MAINTENANCE.—The non-Federal interest shall bear 100 percent of the cost of operation and maintenance of a project under this section.

"(d) PROHIBITED PROJECTS.—No acidic or other toxic mine drainage abatement or treatment project may receive assistance under this section if the project would adversely affect the free-flowing characteristics of any river segment within a qualified hydrologic unit.

"(e) APPLICATIONS FROM FEDERAL ENTITIES.—Any Federal entity may apply to the Administrator for a grant under this section for the purposes of an acidic or toxic mine drainage abatement or treatment project within a qualified hydrologic unit located on lands and waters under the administrative jurisdiction of such entity.

"(f) APPROVAL.—The Administrator shall approve an application submitted pursuant to subsection (b) or (e) after determining that the application meets the requirements of this section.

"(g) QUALIFIED HYDROLOGIC UNIT DEFINED.—For purposes of this section, the term 'qualified hydrologic unit' means a hydrologic unit—

"(1) in which the water quality has been significantly affected by acidic or other toxic mine drainage from past coal mining practices in a manner which adversely impacts biological resources; and

"(2) which contains lands and waters eligible for assistance under title IV of the Surface Mining and Reclamation Act of 1977.".

SEC. 105. WATER SANITATION IN RURAL AND NATIVE ALASKA VILLAGES.

(a) IN GENERAL.—Section 113 (33 U.S.C. 1263) is amended by striking the section heading and designation and subsections (a) through (f) and inserting the following:

"SEC. 113. ALASKA VILLAGE PROJECTS AND PROGRAMS.

"(a) GRANTS.—The Administrator is authorized to make grants—

"(1) for the development and construction of facilities which provide sanitation services for rural and Native Alaska villages;

"(2) for training, technical assistance, and educational programs relating to operation and maintenance for sanitation services in rural and Native Alaska villages; and

"(3) for reasonable costs of administering and managing grants made and programs and projects carried out under this section; except that not to exceed 4 percent of the amount of any grant made under this section may be made for such costs.

"(b) FEDERAL SHARE.—A grant under this section shall be 50 percent of the cost of the program or project being carried out with such grant.

"(c) SPECIAL RULE.—The Administrator shall award grants under this section for project construction following the rules specified in subpart H of part 1942 of title 7 of the Code of Federal Regulations.

"(d) GRANTS TO STATE FOR BENEFIT OF VILLAGES.—Grants under this section may be made to the State for the benefit of rural Alaska villages and Alaska Native villages.

"(e) COORDINATION.—In carrying out activities under this subsection, the Administrator is directed to coordinate efforts between the State of Alaska, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of the Interior, the Secretary of Agriculture, and the recipients of grants.

"(f) FUNDING.—There is authorized to be appropriated $25,000,000 for fiscal years beginning after September 30, 1995, to carry out this section.".

(b) CONFORMING AMENDMENT.—Section 113(g) is amended by inserting after "(g)" the following: "DEFINITIONS.—".

SEC. 106. AUTHORIZATION OF APPROPRIATIONS FOR CHESAPEAKE PROGRAM.

Section 117(d) (33 U.S.C. 1267(d)) is amended—

(1) in paragraph (1), by inserting "such sums as may be necessary for fiscal years 1991 through 1995, and $3,000,000 per fiscal year for each of fiscal years 1996 through 2000" after "1990,"; and

(2) in paragraph (2), by inserting "such sums as may be necessary for fiscal years 1991 through 1995, and $18,000,000 per fiscal year for each of fiscal years 1996 through 2000" after "1990,".

SEC. 107. GREAT LAKES MANAGEMENT.

(a) GREAT LAKES RESEARCH COUNCIL.—

(1) IN GENERAL.—Section 118 (33 U.S.C. 1268) is amended—

(A) in subsection (a)(3)—

(i) by striking subparagraph (E) and inserting the following:

"(E) 'Council' means the Great Lakes Research Council established by subsection (d)(1);";

(ii) by striking "and" at the end of subparagraph (I);

(iii) by striking the period at the end of subparagraph (J) and inserting "; and"; and

(iv) by adding at the end the following:

"(K) 'Great Lakes research' means the application of scientific or engineering expertise to explain, understand, and predict a physical, chemical, biological, or socioeconomic process, or the interaction of 1 or more of the processes, in the Great Lakes ecosystem.";

(B) by striking subsection (d) and inserting the following:

"(d) GREAT LAKES RESEARCH COUNCIL.—

"(1) ESTABLISHMENT OF COUNCIL.—There is established a Great Lakes Research Council.

"(2) DUTIES OF COUNCIL.—The Council—

"(A) shall advise and promote the coordination of Federal Great Lakes research activities to avoid unnecessary duplication and ensure greater effectiveness in achieving protection of the Great Lakes ecosystem through the goals of the Great Lakes Water Quality Agreement;

"(B) not later than 1 year after the date of the enactment of this subparagraph and biennially thereafter and after providing opportunity for public review and comment, shall prepare and provide to interested parties a document that includes—

"(i) an assessment of the Great Lakes research activities needed to fulfill the goals of the Great Lakes Water Quality Agreement;

"(ii) an assessment of Federal expertise and capabilities in the activities needed to fulfill the goals of the Great Lakes Water Quality Agreement, including an inventory of Federal Great Lakes research programs, projects, facilities, and personnel; and

"(iii) recommendations for long-term and short-term priorities for Federal Great Lakes research, based on a comparison of the assessments conducted under clauses (i) and (ii);

"(C) shall identify topics for and participate in meetings, workshops, symposia, and conferences on Great Lakes research issues;

"(D) shall make recommendations for the uniform collection of data for enhancing Great Lakes research and management protocols relating to the Great Lakes ecosystem;

"(E) shall advise and cooperate in—

"(i) improving the compatible integration of multimedia data concerning the Great Lakes ecosystem; and

"(ii) any effort to establish a comprehensive multimedia data base for the Great Lakes ecosystem; and

"(F) shall ensure that the results, findings, and information regarding Great Lakes research programs conducted or sponsored by the Federal Government are disseminated in a timely manner, and in useful forms, to interested persons, using to the maximum extent practicable mechanisms in existence on the date of the dissemination, such as the Great Lakes Research Inventory prepared by the International Joint Commission.

"(3) MEMBERSHIP.—

"(A) IN GENERAL.—The Council shall consist of 1 research manager with extensive knowledge of, and scientific expertise and experience in, the Great Lakes ecosystem from each of the following agencies and instrumentalities:

"(i) The Agency.

"(ii) The National Oceanic and Atmospheric Administration.

"(iii) The National Biological Service.

"(iv) The United States Fish and Wildlife Service.

"(v) Any other Federal agency or instrumentality that expends $1,000,000 or more for a fiscal year on Great Lakes research.

"(vi) Any other Federal agency or instrumentality that a majority of the Council membership determines should be represented on the Council.

"(B) NONVOTING MEMBERS.—At the request of a majority of the Council membership, any person who is a representative of a Federal agency or instrumentality not described in subparagraph (A) or any person who is not a Federal employee may serve as a nonvoting member of the Council.

"(4) CHAIRPERSON.—The chairperson of the Council shall be a member of the Council from an agency specified in clause (i), (ii), or (iii) of paragraph (3)(A) who is elected by a majority vote of the members of the Council. The chairperson shall serve as chairperson for a period of 2 years. A member of the Council may not serve as chairperson for more than 2 consecutive terms.

"(5) EXPENSES.—While performing official duties as a member of the Council, a member shall be allowed travel or transportation expenses under section 5703 of title 5, United States Code.

"(6) INTERAGENCY COOPERATION.—The head of each Federal agency or instrumentality that is represented on the Council—

"(A) shall cooperate with the Council in implementing the recommendations developed under paragraph (2);

"(B) on written request of the chairperson of the Council, may make available, on a reimbursable basis or otherwise, such personnel, services, or facilities as may be necessary to assist the Council in carrying out the duties of the Council under this section; and

"(C) on written request of the chairperson, shall furnish data or information necessary to carry out the duties of the Council under this section.

"(7) INTERNATIONAL COOPERATION.—The Council shall cooperate, to the maximum extent practicable, with the research coordination efforts of the Council of Great Lakes Research Managers of the International Joint Commission.

"(8) REIMBURSEMENT FOR REQUESTED ACTIVITIES.—Each Federal agency or instrumentality represented on the Council may reimburse another Federal agency or instrumentality or a non-Federal entity for costs associated with activities authorized under this subsection that are carried out by the other agency, instrumentality, or entity at the request of the Council.

"(9) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

"(10) EFFECT ON OTHER LAW.—Nothing in this subsection affects the authority of any Federal agency or instrumentality, under any law, to undertake Great Lakes research activities.";

(C) in subsection (e)—

(i) in paragraph (1) by striking "the Program Office and the Research Office shall prepare a joint research plan" and inserting "the Program Office, in consultation with the Council, shall prepare a research plan"; and

(ii) in paragraph (3)(A) by striking "the Research Office, the Agency for Toxic Substances and Disease Registry, and Great Lakes States" and inserting "the Council, the Agency for Toxic Substances and Disease Registry, and Great Lakes States,"; and

(D) in subsection (h)—

(i) by adding "and" at the end of paragraph (1);

(ii) by striking "; and" at the end of paragraph (2) and inserting a period; and

(iii) by striking paragraph (3).

(2) CONFORMING AMENDMENT.—The second sentence of section 403(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1447b(a)) is amended by striking "Great Lakes Research Office authorized under" and inserting "Great Lakes Research Council established by".

(b) CONSISTENCY OF PROGRAMS WITH FEDERAL GUIDANCE.—Section 118(c)(2)(C) (33 U.S.C. 1268(c)(2)(C)) is amended by adding at the end the following: "For purposes of this section, a State's standards, policies, and procedures shall be considered consistent with such guidance if the standards, policies, and procedures are based on scientifically defensible judgments and policy choices made by the State after consideration of the guidance and provide an overall level of protection comparable to that provided by the guidance, taking into account the specific circumstances of the State's waters.".

(c) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—Section 118(c)(7) is amended by adding at the end the following:

"(D) REAUTHORIZATION OF ASSESSMENT AND REMEDIATION OF CONTAMINATED SEDIMENTS PROGRAM.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, in consultation and cooperation with the Assistant Secretary of the Army having responsibility for civil works, shall conduct at least 3 pilot projects involving promising technologies and practices to remedy contaminated sediments (including at least 1 full-scale demonstration of a remediation technology) at sites in the Great Lakes System, as the Administrator determines appropriate.

"(ii) SELECTION OF SITES.—In selecting sites for the pilot projects, the Administrator shall give priority consideration to—

"(I) the Ashtabula River in Ohio;

"(II) the Buffalo River in New York;

"(III) Duluth and Superior Harbor in Minnesota;

"(IV) the Fox River in Wisconsin;

"(V) the Grand Calumet River in Indiana; and

"(VI) Saginaw Bay in Michigan.

"(iii) DEADLINES.—In carrying out this subparagraph, the Administrator shall—

"(I) not later than 18 months after the date of the enactment of this subparagraph, identify at least 3 sites and the technologies and practices to be demonstrated at the sites (including at least 1 full-scale demonstration of a remediation technology); and

"(II) not later than 5 years after such date of enactment, complete at least 3 pilot projects (including at least 1 full-scale demonstration of a remediation technology).

"(iv) ADDITIONAL PROJECTS.—The Administrator, acting through the Program Office, in consultation and cooperation with the Assistant Secretary of the Army having responsibility for civil works, may conduct additional pilot- and full-scale pilot projects involving promising

technologies and practices at sites in the Great Lakes System other than the sites selected under clause (i).

"(v) EXECUTION OF PROJECTS.—The Administrator may cooperate with the Assistant Secretary of the Army having responsibility for civil works to plan, engineer, design, and execute pilot projects under this subparagraph.

"(vi) NON-FEDERAL CONTRIBUTIONS.—The Administrator may accept non-Federal contributions to carry out pilot projects under this subparagraph.

"(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $3,500,000 for each of fiscal years 1996 through 2000.

"(E) TECHNICAL INFORMATION AND ASSISTANCE.—

"(i) IN GENERAL.—The Administrator, acting through the Program Office, may provide technical information and assistance involving technologies and practices for remediation of contaminated sediments to persons that request the information or assistance.

"(ii) TECHNICAL ASSISTANCE PRIORITIES.—In providing technical assistance under this subparagraph, the Administrator, acting through the Program Office, shall give special priority to requests for integrated assessments of, and recommendations regarding, remediation technologies and practices for contaminated sediments at Great Lakes areas of concern.

"(iii) COORDINATION WITH OTHER DEMONSTRATIONS.—The Administrator shall—

"(I) coordinate technology demonstrations conducted under this subparagraph with other federally assisted demonstrations of contaminated sediment remediation technologies; and

"(II) share information from the demonstrations conducted under this subparagraph with the other demonstrations.

"(iv) OTHER SEDIMENT REMEDIATION ACTIVITIES.—Nothing in this subparagraph limits the authority of the Administrator to carry out sediment remediation activities under other laws.

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph $1,000,000 for each of fiscal years 1996 through 2000.".

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) RESEARCH AND MANAGEMENT.—Section 118(e)(3)(B) (33 U.S.C. 1268(e)(3)(B)) is amended by inserting before the period at the end the following: ", such sums as may be necessary for fiscal year 1995, and $4,000,000 per fiscal year for each of fiscal years 1996, 1997, and 1998".

(2) GREAT LAKES PROGRAMS.—Section 118(h) (33 U.S.C. 1268(h)) is amended—

(A) by striking "and" before "$25,000,000"; and

(B) by inserting before the period at the end of the first sentence the following: ", such sums as may be necessary for fiscal years 1992 through 1995, and $17,500,000 per fiscal year for each of fiscal years 1996 through 2000".

The CHAIRMAN. Are there any amendments to title I?

The Clerk will designate title II.

The text of title II is as follows:

TITLE II—CONSTRUCTION GRANTS

SEC. 201. USES OF FUNDS.

(a) NONPOINT SOURCE PROGRAM.—Section 201(g)(1) (33 U.S.C. 1281(g)(1)) is amended by striking the period at the end of the first sentence and all that follows through the period at the end of the last sentence and inserting the following: "and for any purpose for which a grant may be made under sections 319(h) and 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution).".

(b) RETROACTIVE ELIGIBILITY.—Section 201(g)(1) is further amended by adding at the end the following: "The Administrator, with the concurrence of the States, shall develop procedures to facilitate and expedite the retroactive eligibility and provision of grant funding for facilities already under construction.".

SEC. 202. ADMINISTRATION OF CLOSEOUT OF CONSTRUCTION GRANT PROGRAM.

Section 205(g)(1) (33 U.S.C. 1285(g)(1)) is amended by adding at the end the following: "The Administrator may negotiate an annual budget with a State for the purpose of administering the closeout of the State's construction grants program under this title. Sums made available for administering such closeout shall be subtracted from amounts remaining available for obligation under the State's construction grant program under this title.".

SEC. 203. SEWAGE COLLECTION SYSTEMS.

Section 211(a) (33 U.S.C. 1291(a)) is amended—

(1) in clause (1) by striking "an existing collection system" and inserting "a collection system existing on the date of the enactment of the Clean Water Amendments of 1995"; and

(2) in clause (2)—

(A) by striking "an existing community" and inserting "a community existing on such date of enactment"; and

(B) by striking "sufficient existing" and inserting "sufficient capacity existing on such date of enactment".

SEC. 204. TREATMENT WORKS DEFINED.

(a) INCLUSION OF OTHER LANDS.—Section 212(2)(A) (33 U.S.C. 1292(2)(A)) is amended—

(1) by striking "any works, including site";

(2) by striking "is used for ultimate" and inserting "will be used for ultimate"; and

(3) by inserting before the period at the end the following: "and acquisition of other lands, and interests in lands, which are necessary for construction".

(b) POLICY ON COST EFFECTIVENESS.—Section 218(a) (33 U.S.C. 1298(a)) is amended by striking "combination of devices and systems" and all that follows through "from such treatment;" and inserting "treatment works;".

SEC. 205. VALUE ENGINEERING REVIEW.

Section 218(c) (33 U.S.C. 1298(c)) is amended by striking "$10,000,000" and inserting "$25,000,000".

SEC. 206. GRANTS FOR WASTEWATER TREATMENT.

(a) COASTAL LOCALITIES.—The Administrator shall make grants under title II of the Federal Water Pollution Control Act to appropriate instrumentalities for the purpose of construction of treatment works (including combined sewer overflow facilities) to serve coastal localities. No less than $10,000,000 of the amount of such grants shall be used for water infrastructure improvements in New Orleans, no less than $3,000,000 of the amount of such grants shall be used for water infrastructure improvements in Bristol County, Massachusetts, and no less than ⅓ of the amount of such grants shall be used to assist localities that meet both of the following criteria:

(1) NEED.—A locality that has over $2,000,000,000 in category I treatment needs documented and accepted in the Environmental Protection Agency's 1992 Needs Survey database as of February 4, 1993.

(2) HARDSHIP.—A locality that has wastewater user charges, for residential use of 7,000 gallons per month based on Ernst & Young National Water and Wastewater 1992 Rate Survey, greater than 0.65 percent of 1989 median household income for the metropolitan statistical area in which such locality is located as measured by the Bureau of the Census.

(b) FEDERAL SHARE.—Notwithstanding section 202(a)(1) of the Federal Water Pollution Control Act, the Federal share of grants under subsection (a) shall be 80 percent of the cost of construction, and the non-Federal share shall be 20 percent of the cost of construction.

(c) SMALL COMMUNITIES.—The Administrator shall make grants to States for the purpose of providing assistance for the construction of treatment works to serve small communities as defined by the State; except that the term "small communities" may not include any locality with a population greater than 75,000. Funds made available to carry out this subsection shall be allotted by the Administrator to the States in accordance with the allotment formula contained in section 604(a) of the Federal Water Pollution Control Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for making grants under this section $300,000,000 for fiscal year 1996. Such sums shall remain available until expended and shall be equally divided between subsections (a) and (c) of this section. Such authorization of appropriation shall take effect only if the total amount appropriated for fiscal year 1996 to carry out title VI of the Federal Water Pollution Control Act is at least $3,000,000,000.

The CHAIRMAN. Are there any amendments to title II?

The Clerk will designate title III.

The text of title III is as follows:

TITLE III—STANDARDS AND ENFORCEMENT

SEC. 301. EFFLUENT LIMITATIONS.

(a) COMPLIANCE SCHEDULES.—Section 301(b) (33 U.S.C. 1311(b)) is amended—

(1) in paragraph (1)(C) by striking "not later than July 1, 1977,";

(2) by striking the period at the end and inserting "not later than 3 years after the date such limitations are established;"; and

(3) by striking ", and in no case later than March 31, 1989" each place it appears.

(b) MODIFICATIONS FOR NONCONVENTIONAL POLLUTANTS.—

(1) GENERAL AUTHORITY.—Section 301(g)(1) (33 U.S.C. 1311(g)(1)) is amended by striking "(when determined by the Administrator to be a pollutant covered by subsection (b)(2)(F)) and any other pollutant which the Administrator lists under paragraph (4) of this subsection" and inserting "and any other pollutant covered by subsection (b)(2)(F)".

(2) PROCEDURAL REQUIREMENTS FOR LISTING AND REMOVAL OF POLLUTANTS.—Section 301(g) (33 U.S.C. 1311(g)) is further amended by striking paragraphs (4) and (5).

(c) COAL REMINING.—Section 301(p)(2) (33 U.S.C. 1311(p)(2)) is amended by inserting before the period at the end the following: "; except where monitoring demonstrates that the receiving waters do not meet such water quality standards prior to commencement of remining and where the applicant submits a plan which demonstrates to the satisfaction of the Administrator or the State, as the case may be, that identified measures will be utilized to improve the existing water quality of the receiving waters".

(d) PREEXISTING COAL REMINING OPERATIONS.—Section 301(p) (33 U.S.C. 1311) is amended by adding at the end the following:

"(5) PREEXISTING COAL REMINING OPERATIONS.—Any operator of a coal mining operation who conducted remining at a site on which coal mining originally was conducted before the effective date of the Surface Mining Control and Reclamation Act of 1977 shall be deemed to be in compliance with sections 301, 302, 306, 307, and 402 of this Act if—

"(A) such operator commenced remining at such operation prior to the adoption of this subsection in a State program approved under section 402 and performed such remining under a permit pursuant to such Act; and

"(B) the post-mining discharges from such operation do not add pollutants to the waters of the United States in excess of those pollutants discharged from the remined area before the coal remining operation began.".

SEC. 302. POLLUTION PREVENTION OPPORTUNITIES.

(a) INNOVATIVE PRODUCTION PROCESSES.—Subsection (k) of section 301 (33 U.S.C. 1311(k)) is amended to read as follows:

"(k) INNOVATIVE PRODUCTION PROCESSES, TECHNOLOGIES, AND METHODS.—

"(1) IN GENERAL.—In the case of any point source subject to a permit under section 402, the Administrator, with the consent of the State in which the point source is located, or the State in consultation with the Administrator, in the case of a State with an approved program under section 402, may, at the request of the permittee and after public notice and opportunity for comment, extend the deadline for the point source to comply with any limitation established pursuant to subsection (b)(1)(A), (b)(2)(A), or (b)(2)(E) and make other appropriate modifications to the conditions of the point source permit, for the purpose of encouraging the development and use of an innovative pollution prevention technology (including an innovative production process change, innovative pollution control technology, or innovative recycling method) that has the potential to—

"(A) achieve an effluent reduction which is greater than that required by the limitation otherwise applicable;

"(B) meet the applicable effluent limitation to water while achieving a reduction of total emissions to other media which is greater than that required by the otherwise applicable emissions limitations for the other media;

"(C) meet the applicable effluent limitation to water while achieving a reduction in energy consumption; or

"(D) achieve the required reduction with the potential for significantly lower costs than the systems determined by the Administrator to be economically achievable.

"(2) DURATION OF EXTENSIONS.—The extension of the compliance deadlines under paragraph (1) shall not extend beyond the period necessary for the owner of the point source to install and use the innovative process, technology, or method in full-scale production operations, but in no case shall the compliance extensions extend beyond 3 years from the date for compliance with the otherwise applicable limitations.

"(3) CONSEQUENCES OF FAILURE.—In determining the amount of any civil or administrative penalty pursuant to section 309(d) or 309(g) for any violations of a section 402 permit during the extension period referred to in paragraph (1) that are caused by the unexpected failure of an innovative process, technology, or method, a court or the Administrator, as appropriate, shall reduce or eliminate the penalty for such violation if the permittee has made good-faith efforts both to implement the innovation and to comply with any interim limitations.

"(4) REPORT.—Not later than 1 year after the date of the enactment of this subsection, the Administrator shall review, analyze, and compile in a report information on innovative and alternative technologies which are available for preventing and reducing pollution of navigable waters, submit such report to Congress, and publish in the Federal Register a summary of such report and a notice of the availability of such report. The Administrator shall annually update the report prepared under this paragraph, submit the updated report to Congress, and publish in the Federal Register a summary of the updated report and a notice of its availability.".

(b) POLLUTION PREVENTION PROGRAMS.—Section 301 (33 U.S.C. 1311) is amended—

(1) in subsection (l) by striking "subsection (n)" and inserting "subsections (n), (q), and (r)"; and

(2) by adding at the end the following:

"(q) POLLUTION PREVENTION PROGRAMS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator (with the concurrence of the State) or a State with an approved program under section 402, after public notice and an opportunity for comment, may issue a permit under section 402 which modifies the requirements of subsection (b) of this section or section 306 and makes appropriate modifications to the conditions of the permit, or may modify the requirements of section 307, if the Administrator or State determines that pollution prevention measures or practices (including recycling, source reduction, and other measures to reduce discharges or other releases of pollutants to the environment beyond those otherwise required by law) together with such modifications will achieve an overall reduction in emissions to the environment (including emissions to water and air and disposal of solid wastes) from the facility at which the permitted discharge is located that is greater than would otherwise be achievable if the source complied with the requirements of subsection (b) or section 306 or 307 and will result in an overall net benefit to the environment.

"(2) TERM OF MODIFICATION.—A modification made pursuant to paragraph (1) shall extend for the term of the permit or, in the case of modifications under section 307(b), for up to 10 years, and may be extended further if the Administrator or State determines at the expiration of the initial modifications that such modifications will continue to enable the source to achieve greater emissions reduction than would otherwise be attainable.

"(3) NONEXTENSION OF MODIFICATION.—Upon expiration of a modification that is not extended further under paragraph (2), the source shall have a reasonable period of time, not to exceed 2 years, to come into compliance with otherwise applicable requirements of this Act.

"(4) REPORT.—Not later than 3 years after the date of the enactment of this subsection, the Administrator shall submit to Congress a report on the implementation of this subsection and the emissions reductions achieved as a result of modifications made pursuant to this subsection.".

(c) POLLUTION REDUCTION AGREEMENTS.—Section 301 is further amended by adding at the end the following:

"(r) POLLUTION REDUCTION AGREEMENTS.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act, the Administrator (with the concurrence of the State) or a State with an approved program under section 402, after public notice and an opportunity for comment, may issue a permit under section 402 which modifies the requirements of subsection (b) of this section or section 306 and makes appropriate modifications to the conditions of the permit, or may modify the requirements of section 307, if the Administrator or State determines that the owner or operator of the source of the discharge has entered into a binding contractual agreement with any other source of discharge in the same watershed to implement pollution reduction controls or measures beyond those otherwise required by law and that the agreement is being implemented through modifications of a permit issued under section 402 to the other source, by modifications of the requirements of section 307 applicable to the other source, or by nonpoint source control practices and measures under section 319 applicable to the other source. The Administrator or State may modify otherwise applicable requirements pursuant to this section whenever the Administrator or State determines that such pollution reduction control or measures will result collectively in an overall reduction in discharges to the watershed that is greater than would otherwise be achievable if the parties to the pollution reduction agreement each complied with applicable requirements of subsection (b), section 306 or 307 resulting in a net benefit to the watershed.

"(2) NOTIFICATION TO AFFECTED STATES.—Before issuing or modifying a permit under this subsection allowing discharges into a watershed that is within the jurisdiction of 2 or more States, the Administrator or State shall provide written notice of the proposed permit to all States with jurisdiction over the watershed. The Administrator or State shall not issue or modify such permit unless all States with jurisdiction over the watershed have approved such permit or unless such States do not disapprove such permit within 90 days of receiving such written notice.

"(3) TERM OF MODIFICATION.—Modifications made pursuant to this subsection shall extend for the term of the modified permits or, in the case of modifications under section 307, for up to 10 years, and may be extended further if the Administrator or State determines, at the expiration of the initial modifications, that such modifications will continue to enable the sources trading credits to achieve greater reduction in discharges to the watershed collectively than would otherwise be attainable.

"(4) NONEXTENSION OF MODIFICATION.—Upon expiration of a modification that is not extended further under paragraph (3), the source shall have a reasonable period of time, not to exceed 2 years, to come into compliance with otherwise applicable requirements of this Act.

"(5) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to authorize the Administrator or a State, as appropriate, to compel trading among sources or to impose nonpoint source control practices without the consent of the nonpoint source discharger.

"(6) REPORT.—Not later than 3 years after the date of the enactment of this subsection, the Administrator shall submit a report to Congress on the implementation of paragraph (1) and the discharge reductions achieved as a result of modifications made pursuant to paragraph (1).".

(d) ANTIBACKSLIDING.—Section 402(o)(2) (33 U.S.C. 1342(o)(2)) is amended—

(1) in subparagraph (D)—

(A) by inserting "301(q), 301(r)," after "301(n),"; and

(B) by striking "or" the last place it appears;

(2) in subparagraph (E) by striking the period at the end and inserting "; or"; and

(3) by inserting after subparagraph (E) the following:

"(F) the permittee is taking pollution prevention or water conservation measures that produce a net environmental benefit, including, but not limited to, measures that result in the substitution of one pollutant for another pollutant; increase the concentration of a pollutant while decreasing the discharge flow; or increase the discharge of a pollutant or pollutants from one or more outfalls at a permittee's facility, when accompanied by offsetting decreases in the discharge of a pollutant or pollutants from other outfalls at the permittee's facility.".

(e) ANTIDEGRADATION REVIEW.—Section 303(d) (33 U.S.C. 1313(d)) is amended by adding at the end the following:

"(5) ANTIDEGRADATION REVIEW.—The Administrator may not require a State, in implementing the antidegradation policy established under this section, to conduct an antidegradation review in the case of—

"(A) increases in a discharge which are authorized under section 301(g), 301(k), 301(q), 301(r), or 301(t);

"(B) increases in the concentration of a pollutant in a discharge caused by a reduction in wastewater flow;

"(C) increases in the discharge of a pollutant or pollutants from one or more outfalls at a permittee's facility, when accompanied by offsetting decreases in the discharge of a pollutant or pollutants from other outfalls at the permittee's facility;

"(D) reissuance of a permit where there is no increase in existing effluent limitations and, if a new effluent limitation is being added to the permit, where the new limitation is for a pollutant that is newly found in an existing discharge due solely to improved monitoring methods; or

"(E) a new or increased discharge which is temporary or short-term or which the State determines represents an insignificant increased pollutant loading.".

(f) INNOVATIVE PRETREATMENT PRODUCTION PROCESSES.—Subsection (e) of section 307 (33 U.S.C. 1317(e)) is amended to read as follows:

"(e) INNOVATIVE PRETREATMENT PRODUCTION PROCESSES, TECHNOLOGIES, AND METHODS.—

"(1) IN GENERAL.—In the case of any facility that proposes to comply with the national categorical pretreatment standards developed under subsection (b) by applying an innovative pollution prevention technology (including an innovative production process change, innovative pollution control technology, or innovative recycling method) that meets the requirements of section 301(k), the Administrator or the State, in consultation with the Administrator, in the case of a State which has a pretreatment program approved by the Administrator, upon application of the facility and with the concurrence of the treatment works into which the facility introduces pollutants, may extend the deadlines for compliance with the applicable national categorical pretreatment standards established under this section and make other appropriate modifications to the facility's pretreatment requirements if the Administrator or the State, in consultation with the Administrator, in the case of a State which has a pretreatment program approved by the Administrator determines that—

"(A) the treatment works will require the owner of the source to conduct such tests and monitoring during the period of the modification as are necessary to ensure that the modification does not cause or contribute to a violation by the treatment works under section 402 or a violation of section 405;

"(B) the treatment works will require the owner of the source to report on progress at prescribed milestones during the period of modification to ensure that attainment of the pollution reduction goals and conditions set forth in this section is being achieved; and

"(C) the proposed extensions or modifications will not cause or contribute to any violation of a permit granted to the treatment works under section 402, any violation of section 405, or a pass through of pollutants such that water quality standards are exceeded in the body of water into which the treatment works discharges.

"(2) INTERIM LIMITATIONS.—A modification granted pursuant to paragraph (1) shall include interim standards that shall apply during the temporary period of the modification and shall be the more stringent of—

"(A) those necessary to ensure that the discharge will not interfere with the operation of the treatment works;

"(B) those necessary to ensure that the discharge will not pass through pollutants at a level that will cause water quality standards to be exceeded in the navigable waters into which the treatment works discharges;

"(C) the limits established in the previously applicable control mechanism, in those cases in which the limit from which a modification is being sought is more stringent than the limit established in a previous control mechanism applicable to such source.

"(3) DURATION OF EXTENSIONS AND MODIFICATIONS.—The extension of the compliance deadlines and the modified pretreatment requirements established pursuant to paragraph (1) shall not extend beyond the period necessary for the owner to install and use the innovative process, technology, or method in full-scale production operation, but in no case shall the compliance extensions and modified requirements extend beyond 3 years from the date for compliance with the otherwise applicable standards.

"(4) CONSEQUENCES OF FAILURE.—In determining the amount of any civil or administrative penalty pursuant to section 309(d) or 309(g) for any pretreatment violations, or violations by a publicly owned treatment works, caused by the unexpected failure of an innovative process, technology, or method, a court or the Administrator, as appropriate, shall reduce, or eliminate, the penalty amount for such violations provided the facility made good-faith efforts both to implement the innovation and to comply with the interim standards and, in the case of a publicly owned treatment works, good-faith efforts were made to implement the pretreatment program.".

SEC. 303. WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS.

(a) NO REASONABLE RELATIONSHIP.—Section 303(b) (33 U.S.C. 1313(b)) is amended by adding at the end the following:

"(3) NO REASONABLE RELATIONSHIP.—No water quality standard shall be established under this subsection where there is no reasonable relationship between the costs and anticipated benefits of attaining such standard.".

(b) REVISION OF STATE STANDARDS.—

(1) REVIEW OF REVISIONS BY THE ADMINISTRATOR.—Section 303(c)(1) is amended by striking "three" and all that follows through "1972" and inserting the following: "5-year period beginning on the date of the enactment of the Clean Water Amendments of 1995 and, for criteria that are revised by the Administrator pursuant to section 304(a), on or before the 180th day after the date of such revision by the Administrator".

(2) FACTORS.—Section 303(c) (33 U.S.C. 1313(c)) is amended by striking paragraph (2)(A) and inserting the following:

"(2) STATE ADOPTION OF WATER QUALITY STANDARDS.—

"(A) IN GENERAL.—

"(i) SUBMISSION TO ADMINISTRATOR.—Whenever the State revises or adopts a new water quality standard, such standard shall be submitted to the Administrator.

"(ii) DESIGNATED USES AND WATER QUALITY CRITERIA.—The revised or new standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.

"(iii) PROTECTION OF HUMAN HEALTH.—The revised or new standard shall protect human health and the environment and enhance water quality.

"(iv) DEVELOPMENT OF STANDARDS.—In developing revised or new standards, the State may consider information reasonably available on the likely social, economic, energy use, and environmental cost associated with attaining such standards in relation to the benefits to be attained. The State may provide a description of the considerations used in the establishment of the standards.

"(v) RECORD OF STATE'S REVIEW.—The record of a State's review under paragraph (1) of an existing standard or adoption of a new standard that includes water quality criteria issued or revised by the Administrator after the date of the enactment of this sentence shall contain available estimates of costs of compliance with the water quality criteria published by the Administrator under section 304(a)(12) and any comments received by the State on such estimate.

"(vi) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to limit or delay the use of any guidance of the Administrator interpreting water quality criteria to allow the use of a dissolved metals concentration measurement or similar adjustment in determining compliance with a water quality standard or establishing effluent limitations.".

(c) REVISION OF DESIGNATED USES.—Section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

"(C) REVISION OF DESIGNATED USES.—

"(i) REGULATIONS.—After consultation with State officials and not later than 1 year after the date of the enactment of this subparagraph, the Administrator shall propose, and not later than 2 years after such date of enactment shall issue, a revision to the Administrator's regulations regarding designation of uses of waters by States.

"(ii) WATERS NOT ATTAINING DESIGNATED USES.—For navigable waters not attaining designated uses, the Administrator shall identify conditions that make attainment of the designated use infeasible and shall allow a State to modify the designated use if the State determines that such condition or conditions are present with respect to a particular receiving water, or if the State determines that the costs of achieving the designated use are not justified by the benefits.

"(iii) WATERS ATTAINING DESIGNATED USES.—For navigable waters attaining the designated use applicable to such waters for all pollutants, the Administrator shall allow a State to modify the designated use only if the State determines that continued maintenance of the water quality necessary to support the designated use will result in significant social or economic dislocations substantially out of proportion to the benefits to be achieved from maintenance of the designated use.

"(iv) MODIFICATION OF POINT SOURCE LIMITS.—Notwithstanding any other provision of this Act, water quality based limits applicable to point sources may be modified as appropriate to conform to any modified designated use under this section.".

SEC. 304. USE OF BIOLOGICAL MONITORING.

(a) LABORATORY BIOLOGICAL MONITORING CRITERIA.—Subparagraph (B) of section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended—

(1) by inserting "CRITERIA FOR TOXIC POLLUTANTS.—" after "(B)";

(2) by moving such subparagraph 4 ems to the right;

(3) by inserting after the third sentence the following: "Criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods shall employ an aquatic species indigenous, or representative of indigenous, and relevant to the type of waters covered by such criteria and shall take into account the accepted analytical variability associated with such methods in defining an exceedance of such criteria.".

(b) PERMIT PROCEDURES.—Section 402 is amended by adding at the end the following:

"(q) BIOLOGICAL MONITORING PROCEDURES.—

"(1) RESPONDING TO EXCEEDANCES.—If a permit issued under this section contains terms, conditions, or limitations requiring biological monitoring or whole effluent toxicity testing designed to meet criteria for whole effluent toxicity based on laboratory biological monitoring or assessment methods described in section 303(c)(2)(B), the permit shall establish procedures for responding to an exceedance of such

criteria that includes analysis, identification, reduction, or, where feasible, elimination of any effluent toxicity. The failure of a biological monitoring test or whole effluent toxicity test shall not result in a finding of a violation under this Act, unless it is demonstrated that the permittee has failed to comply with such procedures.

"(2) DISCONTINUANCE OF USE.—The permit shall allow the permittee to discontinue such procedures—

"(A) if the permittee is an entity, other than a publicly owned treatment works, if the permittee demonstrates through a field bio-assessment study that a balanced and healthy population of aquatic species indigenous, or representative of indigenous, and relevant to the type of waters exists in the waters that are affected by the discharge, and if the applicable water quality standards are met for such waters; or

"(B) if the permittee is a publicly owned treatment works, the source or cause of such toxicity cannot, after thorough investigation, be identified.".

(c) INFORMATION ON WATER QUALITY CRITERIA.—Section 304(a)(8) (33 U.S.C. 1314(a)(8)) is amended—

(1) by striking ", after" and all that follows through "1987,"; and

(2) by inserting after "publish" the following: ", consistent with section 303(c)(2)(B) of this Act,".

SEC. 305. ARID AREAS.

(a) CONSTRUCTED WATER CONVEYANCES.—Section 303(c)(2) (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

"(D) STANDARDS FOR CONSTRUCTED WATER CONVEYANCES.—

"(i) RELEVANT FACTORS.—If a State exercises jurisdiction over constructed water conveyances in establishing standards under this section, the State may consider the following:

"(I) The existing and planned uses of water transported in a conveyance system.

"(II) Any water quality impacts resulting from any return flow from a constructed water conveyance to navigable waters and the need to protect downstream users.

"(III) Management practices necessary to maintain the conveyance system.

"(IV) State or regional water resources management and water conservation plans.

"(V) The authorized purpose for the constructed conveyance.

"(ii) RELEVANT USES.—If a State adopts or reviews water quality standards for constructed water conveyances, it shall not be required to establish recreation, aquatic life, or fish consumption uses for such systems if the uses are not existing or reasonably foreseeable or such uses impede the authorized uses of the conveyance system.".

(b) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

"(9) CRITERIA AND GUIDANCE FOR EPHEMERAL AND EFFLUENT-DEPENDENT STREAMS.—

"(A) DEVELOPMENT.—Not later than 2 years after the date of the enactment of this paragraph, and after providing notice and opportunity for public comment, the Administrator shall develop and publish—

"(i) criteria for ephemeral and effluent-dependent streams; and

"(ii) guidance to the States on development and adoption of water quality standards applicable to such streams.

"(B) FACTORS.—The criteria and guidance developed under subparagraph (A) shall take into account the limited ability of ephemeral and effluent-dependent streams to support aquatic life and certain designated uses, shall include consideration of the role the discharge may play in maintaining the flow or level of such waters, and shall promote the beneficial use of reclaimed water pursuant to section 101(a)(10).".

(c) FACTORS REQUIRED TO BE CONSIDERED BY ADMINISTRATOR.—Section 303(c)(4) is amended by adding at the end the following: "In revising or adopting any new standard for ephemeral or effluent-dependent streams under this paragraph, the Administrator shall consider the factors referred to in section 304(a)(9)(B).".

(d) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(21) The term 'effluent-dependent stream' means a stream or a segment thereof—

"(A) with respect to which the flow (based on the annual average expected flow, determined by calculating the average mode over a 10-year period) is primarily attributable to the discharge of treated wastewater;

"(B) that, in the absence of a discharge of treated wastewater and other primary anthropogenic surface or subsurface flows, would be an ephemeral stream; or

"(C) that is an effluent-dependent stream under applicable State water quality standards.

"(22) The term 'ephemeral stream' means a stream or segments thereof that flows periodically in response to precipitation, snowmelt, or runoff.

"(23) The term 'constructed water conveyance' means a manmade water transport system constructed for the purpose of transporting water in a waterway that is not and never was a natural perennial waterway.".

SEC. 306. TOTAL MAXIMUM DAILY LOADS.

Section 303(d)(1)(C) (33 U.S.C. 1313(d)(1)(C)) is amended to read as follows:

"(C) TOTAL MAXIMUM DAILY LOADS.—

"(i) STATE DETERMINATION OF REASONABLE PROGRESS.—Each State shall establish, to the extent and according to a schedule the State determines is necessary to achieve reasonable progress toward the attainment or maintenance of water quality standards, for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a)(2) as suitable for such calculation.

"(ii) PHASED TOTAL MAXIMUM DAILY LOADS.—Total maximum daily loads may reflect load reductions the State expects will be realized over time resulting from anticipated implementation of best management practices, storm water controls, or other nonpoint or point source controls; so long as by December 31, 2015, such loads are established at levels necessary to implement the applicable water quality standards with seasonal variations and a margin of safety.

"(iii) CONSIDERATIONS.—In establishing each load, the State shall consider the availability of scientifically valid data and information, the projected reductions achievable by control measures or practices for all sources or categories of sources, and the relative cost-effectiveness of implementing such control measures or practices for such sources.".

SEC. 307. REVISION OF CRITERIA, STANDARDS, AND LIMITATIONS.

(a) REVISION OF WATER QUALITY CRITERIA.—

(1) FACTORS.—Section 304(a)(1) (33 U.S.C. 1314(a)(1)) is amended—

(A) by striking "and (C)" and inserting "(C)"; and

(B) by striking the period at the end and inserting the following: "(D) on the organisms that are likely to be present in various ecosystems; (E) on the bioavailability of pollutants under various natural and man induced conditions; (F) on the magnitude, duration, and frequency of exposure reasonably required to induce the adverse effects of concern; and (G) on the bioaccumulation threat presented under various natural conditions.".

(2) CERTIFICATION.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

"(10) CERTIFICATION.—

"(A) IN GENERAL.—Not later than 5 years after the date of the enactment of this paragraph, and at least once every 5 years thereafter, the Administrator shall publish a written certification that the criteria for water quality developed under paragraph (1) reflect the latest and best scientific knowledge.

"(B) UPDATING OF EXISTING CRITERIA.—Not later than 90 days after the date of the enactment of this paragraph, the Administrator shall publish a schedule for updating, by not later than 5 years after the date of the enactment of this paragraph, the criteria for water quality developed under paragraph (1) before the date of the enactment of this subsection.

"(C) DEADLINE FOR REVISION OF CERTAIN CRITERIA.—Not later than 1 year after the date of the enactment of this paragraph, the Administrator shall revise and publish criteria under paragraph (1) for ammonia, chronic whole effluent toxicity, and metals as necessary to allow the Administrator to make the certification under subparagraph (A).".

(b) CONSIDERATION OF CERTAIN CONTAMINANTS.—Section 304(a) (33 U.S.C. 1314(a)) is amended by adding at the end the following:

"(11) CONSIDERATION OF CERTAIN CONTAMINANTS.—In developing and revising criteria for water quality criteria under paragraph (1), the Administrator shall consider addressing, at a minimum, each contaminant regulated pursuant to section 1412 of the Public Health Service Act (42 U.S.C. 300g–1).".

(c) COST ESTIMATE.—Section 304(a) (33 U.S.C. 1314(a)) is further amended by adding at the end the following:

"(12) COST ESTIMATE.—Whenever the Administrator issues or revises a criteria for water quality under paragraph (1), the Administrator, after consultation with Federal and State agencies and other interested persons, shall develop and publish an estimate of the costs that would likely be incurred if sources were required to comply with the criteria and an analysis to support the estimate. Such analysis shall meet the requirements relevant to the estimation of costs published in guidance issued under section 324(b).".

(d) REVISION OF EFFLUENT LIMITATIONS.—

(1) ELIMINATION OF REQUIREMENT FOR ANNUAL REVISION.—Section 304(b) (33 U.S.C. 1314(b)) is amended in the matter preceding paragraph (1) by striking "and, at least annually thereafter," and inserting "and thereafter shall".

(2) SPECIAL RULE.—Section 304(b) (33 U.S.C. 1314(b)) is amended by striking the period at the end of the first sentence and inserting the following: "; except that guidelines issued under paragraph (1)(A) addressing pollutants identified pursuant to subsection (a)(4) shall not be revised after February 15, 1995, to be more stringent unless such revised guidelines meet the requirements of paragraph (4)(A).".

(e) SCHEDULE FOR REVIEW OF GUIDELINES.—Section 304(m)(1) (33 U.S.C. 1314(m)(1)) is amended to read as follows:

"(1) PUBLICATION.—Not later than 3 years after the date of the enactment of the Clean Water Amendments of 1995, the Administrator shall publish in the Federal Register a plan which shall—

"(A) identify categories of sources discharging pollutants for which guidelines under subsection (b)(2) of this section and section 306 have not been previously published;

"(B) establish a schedule for determining whether such discharge presents a significant risk to human health and the environment and whether such risk is sufficient, when compared to other sources of pollutants in navigable waters, to warrant regulation by the Administrator; and

"(C) establish a schedule for issuance of effluent guidelines for those categories identified pursuant to subparagraph (B).".

(f) REVISION OF PRETREATMENT REQUIREMENTS.—Section 304(g)(1) (33 U.S.C. 1314(g)(1)) is amended by striking "and review at least annually thereafter and, if appropriate, revise" and insert "and thereafter revise, as appropriate,".

(g) CENTRAL TREATMENT FACILITY EXEMPTION.—Section 304 (33 U.S.C. 1314) is amended by adding at the end the following:

"(n) CENTRAL TREATMENT FACILITY EXEMPTION.—The exemption from effluent guidelines for the Iron and Steel Manufacturing Point Source Category set forth in section 420.01(b) of title 40, Code of Federal Regulations, for the facilities listed in such section shall remain in effect for any facility that met the requirements of such section on or before July 26, 1982, until the Administrator develops alternative effluent guidelines for the facility.".

SEC. 308. INFORMATION AND GUIDELINES.

Section 304(i)(2)(D) (33 U.S.C. 1314(i)(2)(D)) is amended by striking "any person" and all that follows through the period at the end and inserting the following: "any person (other than a retiree or an employee or official of a city, county, or local governmental agency) who receives a significant portion of his or her income during the period of service on the board or body directly or indirectly from permit holders or applicants for a permit).".

SEC. 309. SECONDARY TREATMENT.

(a) COASTAL DISCHARGES.—Section 304(d) (33 U.S.C. 1314(d)) is amended by adding at the end the following:

"(5) COASTAL DISCHARGES.—For purposes of this subsection, any municipal wastewater treatment facility shall be deemed the equivalent of a secondary treatment facility if each of the following requirements is met:

"(A) The facility employs chemically enhanced primary treatment.

"(B) The facility, on the date of the enactment of this paragraph, discharges through an ocean outfall into an open marine environment greater than 4 miles offshore into a depth greater than 300 feet.

"(C) The facility's discharge is in compliance with all local and State water quality standards for the receiving waters.

"(D) The facility's discharge will be subject to an ocean monitoring program acceptable to relevant Federal and State regulatory agencies.".

(b) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

"(s) MODIFICATION OF SECONDARY TREATMENT REQUIREMENTS.—

"(1) IN GENERAL.—The Administrator, with the concurrence of the State, shall issue a 10-year permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters which are at least 150 feet deep through an ocean outfall which discharges at least 1 mile offshore, if the applicant demonstrates that—

"(A) there is an applicable ocean plan and the facility's discharge is in compliance with all local and State water quality standards for the receiving waters;

"(B) the facility's discharge will be subject to an ocean monitoring program determined to be acceptable by relevant Federal and State regulatory agencies;

"(C) the applicant has an Agency approved pretreatment plan in place; and

"(D) the applicant, at the time such modification becomes effective, will be discharging effluent which has received at least chemically enhanced primary treatment and achieves a monthly average of 75 percent removal of suspended solids.

"(2) DISCHARGE OF ANY POLLUTANT INTO MARINE WATERS DEFINED.—For purposes of this subsection, the term 'discharge of any pollutant into marine waters' means a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement.

"(3) DEADLINE.—On or before the 90th day after the date of submittal of an application for a modification under paragraph (1), the Administrator shall issue to the applicant a modified permit under section 402 or a written determination that the application does not meet the terms and conditions of this subsection.

"(4) EFFECT OF FAILURE TO RESPOND.—If the Administrator does not respond to an application for a modification under paragraph (1) on or before the 90th day referred to in paragraph (3), the application shall be deemed approved and the modification sought by the applicant shall be in effect for the succeeding 10-year period.".

(2) EXTENSION OF APPLICATION DEADLINE.—Section 301(j) (33 U.S.C. 1311(j)) is amended by adding at the end the following:

"(6) EXTENSION OF APPLICATION DEADLINE.—In the 365-day period beginning on the date of the enactment of this paragraph, municipalities may apply for a modification pursuant to subsection (s) of the requirements of subsection (b)(1)(B) of this section.".

(c) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—Section 301 (33 U.S.C. 1311) is amended by adding at the end the following:

"(t) MODIFICATIONS FOR SMALL SYSTEM TREATMENT TECHNOLOGIES.—The Administrator, with the concurrence of the State, or a State with an approved program under section 402 may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works serving a community of 20,000 people or fewer if the applicant demonstrates to the satisfaction of the Administrator that—

"(1) the effluent from such facility originates primarily from domestic users; and

"(2) such facility utilizes a properly constructed and operated alternative treatment system (including recirculating sand filter systems, constructed wetlands, and oxidation lagoons) which is equivalent to secondary treatment or will provide in the receiving waters and watershed an adequate level of protection to human health and the environment and contribute to the attainment of water quality standards.".

(d) PUERTO RICO.—Section 301 (33 U.S.C. 1311) is further amended by adding at the end the following:

"(u) PUERTO RICO.—

"(1) STUDY BY GOVERNMENT OF PUERTO RICO.—Not later than 3 months after the date of the enactment of this section, the Government of Puerto Rico may, after consultation with the Administrator, initiate a study of the marine environment of Anasco Bay off the coast of the Mayaguez region of Puerto Rico to determine the feasibility of constructing a deepwater outfall for the publicly owned treatment works located at Mayaguez, Puerto Rico. Such study shall recommend one or more technically feasible locations for the deepwater outfall based on the effects of such outfall on the marine environment.

"(2) APPLICATION FOR MODIFICATION.—Notwithstanding subsection (j)(1)(A), not later than 18 months after the date of the enactment of this section, an application may be submitted for a modification pursuant to subsection (h) of the requirements of subsection (b)(1)(B) of this section by the owner of the publicly owned treatment works at Mayaguez, Puerto Rico, for a deepwater outfall at a location recommended in the study conducted pursuant to paragraph (1).

"(3) INITIAL DETERMINATION.—On or before the 90th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue to the applicant a draft initial determination regarding the modification of the existing permit.

"(4) FINAL DETERMINATION.—On or before the 270th day after the date of submittal of an application for modification under paragraph (2), the Administrator shall issue a final determination regarding such modification.

"(5) EFFECTIVENESS.—If a modification is granted pursuant to an application submitted under this subsection, such modification shall be effective only if the new deepwater outfall is operational within 5 years after the date of the enactment of this subsection. In all other aspects, such modification shall be effective for the period applicable to all modifications granted under subsection (h).".

SEC. 310. TOXIC POLLUTANTS.

(a) TOXIC EFFLUENT LIMITATIONS AND STANDARDS.—Section 307(a)(2) (33 U.S.C. 1317(a)(2)) is amended—

(1) by striking "(2) Each" and inserting the following:

"(2) TOXIC EFFLUENT LIMITATIONS AND STANDARDS.—

"(A) IN GENERAL.—Each";

(2) by moving paragraph (2) 2 ems to the right;

(3) by indenting subparagraph (A), as so designated, and moving the remaining text of such subparagraph 2 ems further to the right; and

(4) in subparagraph (A), as so designated, by striking the third sentence; and

(5) by adding at the end the following:

"(B) FACTORS.—The published effluent standard (or prohibition) shall take into account—

"(i) the pollutant's persistence, toxicity, degradability, and bioaccumulation potential;

"(ii) the magnitude and risk of exposure to the pollutant, including risks to affected organisms and the importance of such organisms;

"(iii) the relative contribution of point source discharges of the pollutant to the overall risk from the pollutant;

"(iv) the availability of, costs associated with, and risk posed by substitute chemicals or processes or the availability of treatment processes or control technology;

"(v) the beneficial and adverse social and economic effects of the effluent standard, including the impact on energy resources;

"(vi) the extent to which effective control is being or may be achieved in an expeditious manner under other regulatory authorities;

"(vii) the impact on national security interests; and

"(viii) such other factors as the Administrator considers appropriate.".

(b) BEACH WATER QUALITY MONITORING.—

(1) IN GENERAL.—Section 304 is further amended by adding at the end the following:

"(o) BEACH WATER QUALITY MONITORING.—After consultation with appropriate Federal, State, and local agencies and after providing notice and opportunity for public comment, the Administrator shall develop and issue, not later than 18 months after the date of the enactment of this Act, guidance that States may use in monitoring water quality at beaches and issuing health advisories with respect to beaches, including testing protocols, recommendations on frequency of testing and monitoring, recommendations on pollutants for which monitoring and testing should be conducted, and recommendations on when health advisories should be issued. Such guidance shall be based on the best available scientific information and be sufficient to protect public health and safety in the

case of any reasonably expected exposure to pollutants as a result of swimming or bathing.".

(2) REPORTS.—Section 516(a) (33 U.S.C. 1375(a)) is amended by striking "and (9)" and inserting "(9) the monitoring conducted by States on the water quality of beaches and the issuance of health advisories with respect to beaches, and (10)".

(c) FISH CONSUMPTION ADVISORIES.—Any fish consumption advisories issued by the Administrator shall be based upon the protocols, methodology, and findings of the Food and Drug Administration.

SEC. 311. LOCAL PRETREATMENT AUTHORITY.

Section 307 (33 U.S.C. 1317) is amended by adding at the end the following new subsection:

"(f) LOCAL PRETREATMENT AUTHORITY.—

"(1) DEMONSTRATION.—If, to carry out the purposes identified in paragraph (2), a publicly owned treatment works with an approved pretreatment program demonstrates to the satisfaction of the Administrator, or a State with an approved program under section 402, that—

"(A) such publicly owned treatment works is in compliance, and is likely to remain in compliance, with its permit under section 402, including applicable effluent limitations and narrative standards;

"(B) such publicly owned treatment works is in compliance, and is likely to remain in compliance, with applicable air emission limitations;

"(C) biosolids produced by such publicly owned treatment works meet beneficial use requirements under section 405; and

"(D) such publicly owned treatment works is likely to continue to meet all applicable State requirements;

the approved pretreatment program shall be modified to allow the publicly owned treatment works to apply local limits in lieu of categorical pretreatment standards promulgated under this section.

"(2) PURPOSES.—The publicly owned treatment works may make the demonstration to the Administrator or the State, as the case may be, to apply local limits in lieu of categorical pretreatment standards, as the treatment works deems necessary, for the purposes of—

"(A) reducing the administrative burden associated with the designation of an 'industrial user' as a 'categorical industrial user'; or

"(B) eliminating additional redundant or unnecessary treatment by industrial users which has little or no environmental benefit.

"(3) LIMITATIONS.—

"(A) SIGNIFICANT NONCOMPLIANCE.—The publicly owned treatment works may not apply local limits in lieu of categorical pretreatment standards to any industrial user which is in significant noncompliance (as defined by the Administrator) with its approved pretreatment program.

"(B) PROCEDURES.—A demonstration to the Administrator or the State under paragraph (1) must be made under the procedures for pretreatment program modification provided under this section and section 402.

"(4) ANNUAL REVIEW.—

"(A) DEMONSTRATION RELATING TO ABILITY TO MEET CRITERIA.—As part of the annual pretreatment report of the publicly owned treatment works to the Administrator or State, the treatment works shall demonstrate that application of local limits in lieu of categorical pretreatment standards has not resulted in the inability of the treatment works to meet the criteria of paragraph (1).

"(B) TERMINATION OF AUTHORITY.—If the Administrator or State determines that application of local limits in lieu of categorical pretreatment standards has resulted in the inability of the treatment works to meet the criteria of paragraph (1), the authority of a publicly owned treatment works under this section shall be terminated and any affected industrial user shall have a reasonable period of time to be determined by the Administrator or State, but not to exceed 2 years, to come into compliance with any otherwise applicable requirements of this Act.".

SEC. 312. COMPLIANCE WITH MANAGEMENT PRACTICES.

Section 307 (33 U.S.C. 1317) is amended by adding at the end the following:

"(g) COMPLIANCE WITH MANAGEMENT PRACTICES.—

"(1) SPECIAL RULE.—The Administrator or a State with a permit program approved under section 402 may allow any person that introduces silver into a publicly owned treatment works to comply with a code of management practices with respect to the introduction of silver into the treatment works for a period not to exceed 5 years beginning on the date of the enactment of this subsection in lieu of complying with any pretreatment requirement (including any local limit) based on an effluent limitation for the treatment works derived from a water quality standard for silver—

"(A) if the treatment works has accepted the code of management practices;

"(B) if the code of management practices meets the requirements of paragraph (2); and

"(C) if the facility is—

"(i) part of a class of facilities for which the code of management practices has been approved by the Administrator or the State;

"(ii) in compliance with a mass limitation or concentration level for silver attainable with the application of the best available technology economically achievable for such facilities, as established by the Administrator after a review of the treatment and management practices of such class of facilities; and

"(iii) implementing the code of management practices.

"(2) CODE OF MANAGEMENT PRACTICES.—A code of management practices meets the requirements of this paragraph if the code of management practices—

"(A) is developed and adopted by representatives of industry and publicly owned treatment works of major urban areas;

"(B) is approved by the Administrator or the State, as the case may be;

"(C) reflects acceptable industry practices to minimize the amount of silver introduced into publicly owned treatment works or otherwise entering the environment from the class of facilities for which the code of management practices is approved; and

"(D) addresses, at a minimum—

"(i) the use of the best available technology economically achievable, based on a review of the current state of such technology for such class of facilities and of the effluent guidelines for such facilities;

"(ii) water conservation measures available to reduce the total quantity of discharge from such facilities to publicly owned treatment works;

"(iii) opportunities to recover silver (and other pollutants) from the waste stream prior to introduction into a publicly owned treatment works; and

"(iv) operating and maintenance practices to minimize the amount of silver introduced into publicly owned treatment works and to assure consistent performance of the management practices and treatment technology specified under this paragraph.

"(3) INTERIM EXTENSION FOR POTWS RECEIVING SILVER.—In any case in which the Administrator or a State with a permit program approved under section 402 allows under paragraph (1) a person to comply with a code of management practices for a period of not to exceed 5 years in lieu of complying with a pretreatment requirement (including a local limit) for silver, the Administrator or State, as applicable, shall modify the permit conditions and effluent limitations for any affected publicly owned treatment works to defer for such period compliance with any effluent limitation derived from a water quality standard for silver beyond that required by section 301(b)(2), notwithstanding the provisions of section 303(d)(4) and 402(o), if the Administrator or the State, as applicable, finds that—

"(A) the quality of any affected waters and the operation of the treatment works will be adequately protected during such period by implementation of the code of management practices and the use of best technology economically achievable by persons introducing silver into the treatment works;

"(B) the introduction of pollutants into such treatment works is in compliance with paragraphs (1) and (2); and

"(C) a program of enforcement by such treatment works and the State ensures such compliance.".

SEC. 313. FEDERAL ENFORCEMENT.

(a) ADJUSTMENT OF PENALTIES.—Section 309 (33 U.S.C. 1319) is amended by adding at the end the following:

"(h) ADJUSTMENT OF MONETARY PENALTIES FOR INFLATION.—

"(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this subsection, and at least once every 4 years thereafter, the Administrator shall adjust each monetary penalty provided by this section in accordance with paragraph (2) and publish such adjustment in the Federal Register.

"(2) METHOD.—An adjustment to be made pursuant to paragraph (1) shall be determined by increasing or decreasing the maximum monetary penalty or the range of maximum monetary penalties, as appropriate, by multiplying the cost-of-living adjustment and the amount of such penalty.

"(3) COST-OF-LIVING ADJUSTMENT DEFINED.—In this subsection, the term 'cost-of-living' adjustment means the percentage (if any) for each monetary penalty by which—

"(A) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; is greater or less than

"(B) the Consumer Price Index for—

"(i) with respect to the first adjustment under this subsection, the month of June of the calendar year preceding the date of the enactment of this subsection; and

"(ii) with respect to each subsequent adjustment under this subsection, the month of June of the calendar year in which the amount of such monetary penalty was last adjusted under this subsection.

"(4) ROUNDING.—In making adjustments under this subsection, the Administrator may round the dollar amount of a penalty, as appropriate.

"(5) APPLICABILITY.—Any increase or decrease to a monetary penalty resulting from this subsection shall apply only to violations which occur after the date any such increase takes effect.".

(b) JOINING STATES AS PARTIES IN ACTIONS INVOLVING MUNICIPALITIES.—Section 309(e) (33 U.S.C. 1319(e)) is amended by striking "shall be joined as a party. Such State" and inserting "may be joined as a party. Any State so joined as a party".

SEC. 314. RESPONSE PLANS FOR DISCHARGES OF OIL OR HAZARDOUS SUBSTANCES.

(a) IN GENERAL.—The requirements of section 311(j)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)(5)) shall not apply with respect to—

(1) a municipal or industrial treatment works at which no greater than a de minimis quantity of oil or hazardous substances is stored; or

(2) a facility that stores process water mixed with a de minimis quantity of oil.

(b) REGULATIONS.—The President shall issue regulations clarifying the meaning of the term "de minimis quantity of oil or hazardous substances" as used in this section.

SEC. 315. MARINE SANITATION DEVICES.

Section 312(c)(1)(A) (33 U.S.C. 1322(c)(1)(A)) is amended by adding at the end the following: "Not later than 2 years after the date of the enactment of this sentence, and at least once every 5 years thereafter, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating and after providing notice and opportunity for public comment, shall review such standards and regulations to take into account improvements in technology relating to marine sanitation devices and based on such review shall make such revisions to such standards and regulations as may be necessary.".

SEC. 316. FEDERAL FACILITIES.

(a) APPLICATION OF CERTAIN PROVISIONS.—Section 313(a) (33 U.S.C. 1323(a)) is amended by striking all preceding subsection (b) and inserting the following:

"SEC. 313. FEDERAL FACILITIES POLLUTION CONTROL.

"(a) APPLICABILITY OF FEDERAL, STATE, INTERSTATE, AND LOCAL LAWS.—

"(1) IN GENERAL.—Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

"(A) having jurisdiction over any property or facility, or

"(B) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants,

and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner and to the same extent as any nongovernmental entity, including the payment of reasonable service charges.

"(2) TYPES OF ACTIONS COVERED.—Paragraph (1) shall apply—

"(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement),

"(B) to the exercise of any Federal, State, or local administrative authority, and

"(C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.

"(3) PENALTIES AND FINES.—The Federal, State, interstate, and local substantive and procedural requirements, administrative authority, and process and sanctions referred to in paragraph (1) include all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations.

"(4) SOVEREIGN IMMUNITY.—

"(A) WAIVER.—The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any requirement, administrative authority, and process and sanctions referred to in paragraph (1) (including any injunctive relief, any administrative order, any civil or administrative penalty or fine referred to in paragraph (3), or any reasonable service charge).

"(B) PROCESSING FEES.—The reasonable service charges referred to in this paragraph include fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local water pollution regulatory program.

"(5) EXEMPTIONS.—

"(A) GENERAL AUTHORITY OF PRESIDENT.—The President may exempt any effluent source of any department, agency, or instrumentality in the executive branch from compliance with any requirement to which paragraph (1) applies if the President determines it to be in the paramount interest of the United States to do so; except that no exemption may be granted from the requirements of section 306 or 307 of this Act.

"(B) LIMITATION.—No exemptions shall be granted under subparagraph (A) due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

"(C) TIME PERIOD.—Any exemption under subparagraph (A) shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods of not to exceed 1 year upon the President's making a new determination.

"(D) MILITARY PROPERTY.—In addition to any exemption of a particular effluent source, the President may, if the President determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vessels, vehicles, or other classes or categories of property, and access to such property, which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at 3-year intervals.

"(E) REPORTS.—The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the President's reason for granting such exemption.

"(6) VENUE.—Nothing in this section shall be construed to prevent any department, agency, or instrumentality of the Federal Government, or any officer, agent, or employee thereof in the performance of official duties, from removing to the appropriate Federal district court any proceeding to which the department, agency, or instrumentality or officer, agent, or employee thereof is subject pursuant to this section, and any such proceeding may be removed in accordance with chapter 89 of title 28, United States Code.

"(7) PERSONAL LIABILITY OF FEDERAL EMPLOYEES.—No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local water pollution law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer.

"(8) CRIMINAL SANCTIONS.—An agent, employee, or officer of the United States shall be subject to any criminal sanction (including any fine or imprisonment) under any Federal or State water pollution law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction.".

(b) FUNDS COLLECTED BY A STATE.—Section 313 (33 U.S.C. 1323) is further amended by adding at the end the following:

"(c) LIMITATION ON STATE USE OF FUNDS.—Unless a State law in effect on the date of the enactment of this subsection or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government in penalties and fines imposed for the violation of a substantive or procedural requirement referred to in subsection (a) shall be used by a State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.".

(c) ENFORCEMENT.—Section 313 is further amended by adding at the end the following:

"(d) FEDERAL FACILITY ENFORCEMENT.—

"(1) ADMINISTRATIVE ENFORCEMENT BY EPA.—The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act.

"(2) PROCEDURE.—The Administrator shall initiate an administrative enforcement action against a department, agency, or instrumentality under this subsection in the same manner and under the same circumstances as an action would be initiated against any other person under this Act. The amount of any administrative penalty imposed under this subsection shall be determined in accordance with section 309(d) of this Act.

"(3) VOLUNTARY SETTLEMENT.—Any voluntary resolution or settlement of an action under this subsection shall be set forth in an administrative consent order.

"(4) CONFERRAL WITH EPA.—No administrative order issued to a department, agency, or instrumentality under this section shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.".

(d) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Section 313 is further amended by adding at the end the following:

"(e) LIMITATION ON ACTIONS AND RIGHT OF INTERVENTION.—Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or for which the Administrator has issued a final order and the violator has either paid a penalty or fine assessed under this subsection or is subject to an enforceable schedule of corrective actions, shall not be the subject of an action under section 505 of this Act. In any action under this subsection, any citizen may intervene as a matter of right.".

(e) DEFINITION OF PERSON.—Section 502(5) (33 U.S.C. 1362(5)) is amended by inserting before the period at the end the following: "and includes any department, agency, or instrumentality of the United States".

(f) DEFINITION OF RADIOACTIVE MATERIALS.—Section 502 (33 U.S.C. 1362) is amended by adding at the end the following:

"(24) The term 'radioactive materials' includes source materials, special nuclear materials, and byproduct materials (as such terms are defined under the Atomic Energy Act of 1954) which are used, produced, or managed at facilities not licensed by the Nuclear Regulatory Commission; except that such term does not include any material which is discharged from a vessel covered by Executive Order 12344 (42 U.S.C. 7158 note; relating to the Naval Nuclear Propulsion Program).".

(g) CONFORMING AMENDMENTS.—Section 313(b) (33 U.S.C. 1323(b)) is amended—

(1) by striking "(b)(1)" and inserting the following:

"(b) WASTEWATER FACILITIES.—

"(1) COOPERATION FOR USE OF WASTEWATER CONTROL SYSTEMS.—";

(2) in paragraph (2) by inserting "LIMITATION ON CONSTRUCTION.—" before "Construction"; and

(3) by moving paragraphs (1) and (2) 2 ems to the right.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of

the enactment of this Act and shall only apply to violations occurring after such date of enactment.

SEC. 317. CLEAN LAKES.

(a) PRIORITY LAKES.—Section 314(d)(2) (33 U.S.C. 1324(d)(2)) is amended by inserting "Paris Twin Lakes, Illinois; Otsego Lake, New York; Raystown Lake, Pennsylvania;" after "Minnesota;".

(b) FUNDING.—Section 314 (33 U.S.C. 1324) is amended by adding at the end the following:

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 per fiscal year for each of fiscal years 1996 through 2000.".

SEC. 318. COOLING WATER INTAKE STRUCTURES.

Section 316(b) (33 U.S.C. 1326(b)) is amended—

(1) by inserting after "(b)" the following: "STANDARD FOR COOLING WATER INTAKE STRUCTURES.—";

(2) by inserting before "Any" the following: "(1) IN GENERAL.—";

(3) by indenting paragraph (1), as designated by paragraph (2) of this section, and moving such paragraph 2 ems to the right; and

(4) by adding at the end the following:

"(2) NEW POINT SOURCE CONSIDERATIONS.—In establishing a standard referred to in paragraph (1) for cooling water intake structures located at new point sources, the Administrator shall consider, at a minimum, the following:

"(A) The relative technological, engineering, and economic feasibility of possible technologies or techniques for minimizing any such adverse environmental impacts.

"(B) The relative technological, engineering, and economic feasibility of possible site locations, intake structure designs, and cooling water flow techniques.

"(C) The relative environmental, social, and economic costs and benefits of possible technologies, techniques, site locations, intake structure designs, and cooling water flow techniques.

"(D) The projected useful life of the new point source.

"(3) EXISTING POINT SOURCES.—For existing point sources, the Administrator may require the use of best technology available in the case of existing cooling water intake structures if the Administrator determines such structures are having or could have a significant adverse impact on the aquatic environment. In establishing a standard referred to in paragraph (1) for such existing point sources, the Administrator shall consider, at a minimum, the following:

"(A) The relative technological, engineering, and economic feasibility of reasonably available retrofit technologies or techniques for minimizing any such adverse environmental impacts.

"(B) Other mitigation measures for offsetting the anticipated adverse environmental impacts resulting from the withdrawal of cooling water.

"(C) Relative environmental, social, and economic costs and benefits of possible retrofit technologies, techniques, and mitigation measures.

"(D) The projected remaining useful life of the existing point source.

"(4) DEFINITIONS.—In this subsection, the following definitions apply:

"(A) NEW POINT SOURCE.—The term 'new point source' means any point source the construction of which will commence after the publication of proposed regulations prescribing a standard for intake structures that will be applicable to such source if such standard is promulgated in accordance with paragraph (2).

"(B) EXISTING POINT SOURCE.—The term 'existing point source' means any point source that is not a new point source.".

SEC. 319. NONPOINT SOURCE MANAGEMENT PROGRAMS.

(a) STATE ASSESSMENT REPORT.—

(1) CONTENTS.—Section 319(a)(1)(C) (33 U.S.C. 1329(a)(1)(C)) is amended by striking "best management practices and".

(2) INFORMATION USED IN PREPARATION.—Section 319(a)(2) is amended—

(A) by inserting ", reviewing, and revising" after "developing"; and

(B) by striking "section" the first place it appears and inserting "subsection".

(3) REVIEW AND REVISION.—Section 319(a) is amended by adding at the end the following:

"(3) REVIEW AND REVISION.—Not later than 18 months after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, the State shall review, revise, and submit to the Administrator the report required by this subsection.".

(b) STATE MANAGEMENT PROGRAM.—

(1) TERM OF PROGRAM.—Section 319(b)(1) is amended by striking "four" and inserting "5".

(2) CONTENTS.—Section 319(b)(2) is amended—

(A) in subparagraph (A)—

(i) by striking "best";

(ii) by striking "paragraph (1)(B)" and inserting "subsection (a)(1)(B)"; and

(iii) by inserting "and measure" after "practice";

(B) in subparagraph (B)—

(i) by striking "nonregulatory or regulatory programs for enforcement," and inserting "one or more of the following: voluntary programs, incentive-based programs, regulatory programs, enforceable policies and mechanisms, State management programs approved under section 306 of the Coastal Zone Management Act of 1972,"; and

(ii) by striking "achieve implementation" and all that follows before the period and inserting "manage categories, subcategories, or particular nonpoint sources to the degree necessary to provide for reasonable further progress toward the goal of attaining water quality standards within 15 years of approval of the State program for those waters identified under subsection (a)(1)(A)";

(C) by striking subparagraph (C) and inserting the following:

"(C) A schedule containing interim goals and milestones for making reasonable progress toward the attainment of standards, which may be demonstrated by one or any combination of the following: improvements in water quality (including biological indicators), documented implementation of voluntary nonpoint source control practices and measures, and adoption of enforceable policies and mechanisms.";

(D) in subparagraph (D) by striking "A certification of" and inserting "After the date of the enactment of the Clean Water Amendments of 1995, a certification by"; and

(E) by adding at the end the following:

"(G) A description of the monitoring or other assessment which will be carried out under the program for the purposes of monitoring and assessing the effectiveness of the program, including the attainment of interim goals and milestones.

"(H) An identification of activities on Federal lands in the State that are inconsistent with the State management program.

"(I) An identification of goals and milestones for progress in attaining water quality standards, including a projected date for attaining such standards as expeditiously as practicable but not later than 15 years after the date of approval of the State program for each of the waters listed pursuant to subsection (a).".

(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—Section 319(b)(3) is amended by inserting before the period at the end the following: ", including academic institutions, private industry experts, and other individual experts in water resource conservation and planning".

(4) NEW TECHNOLOGIES; USE OF RESOURCES; AGRICULTURAL PROGRAMS.—Section 319(b) is amended by adding at the end the following:

"(5) RECOGNITION OF NEW TECHNOLOGIES.—In developing and implementing a management program under this subsection, a State may recognize and utilize new practices, technologies, processes, products, and other alternatives.

"(6) EFFICIENT AND EFFECTIVE USE OF RESOURCES.—In developing and implementing a management program under this subsection, a State may recognize and provide for a methodology which takes into account situations in which management measures used to control one pollutant have an adverse impact with respect to another pollutant. The methodology should encourage the balanced combination of measures which best address the various impairments on the watershed or site.

"(7) RECOGNITION OF AGRICULTURAL PROGRAMS.—Any agricultural producer who has voluntarily developed and is implementing an approved whole farm or ranch natural resources management plan shall be considered to be in compliance with the requirements of a State program developed under this section—

"(A) if such plan has been developed under a program subject to a memorandum of agreement between the Chief of the Natural Resources Conservation Service and the Governor, or their respective designees; and

"(B) if such memorandum of agreement specifies—

"(i) the scope and content of the Natural Resources Conservation Service program (not an individual farm or ranch plan) in the State or regions of the State;

"(ii) the terms of approval, implementation, and duration of a voluntary farm or ranch plan for agricultural producers;

"(iii) the responsibilities for assessing implementation of voluntary whole farm and ranch natural resource management plans; and

"(iv) the duration of such memorandum of agreement.

At a minimum, such memorandum of agreement shall be reviewed and may be revised every 5 years, as part of the State review of its management program under this section.".

(c) SUBMISSION OF MANAGEMENT PROGRAMS.—Paragraph (2) of section 319(c) is amended to read as follows:

"(2) TIME PERIOD FOR SUBMISSION OF MANAGEMENT PROGRAMS.—Each management program shall be submitted to the Administrator within 30 months of the issuance by the Administrator of the final guidance under subsection (o) and every 5 years thereafter. Each program submission after the initial submission following the date of the enactment of the Clean Water Amendments of 1995 shall include a demonstration of reasonable further progress toward the goal of attaining water quality standards within 15 years of approval of the State program, including documentation of the degree to which the State has achieved the interim goals and milestones contained in the previous program submission. Such demonstration shall take into account the adequacy of Federal funding under this section.".

(d) APPROVAL AND DISAPPROVAL OF REPORTS AND MANAGEMENT PROGRAMS.—

(1) DEADLINE.—Section 319(d)(1) is amended by inserting "or revised report" after "any report".

(2) DISAPPROVAL.—Section 319(d)(2) is amended—

(A) in subparagraph (B) by inserting before the semicolon the following: "; except that such program or portion shall not be disapproved solely because the program or portion does not include enforceable policies or mechanisms";

(B) in subparagraph (D) by striking "are not adequate" and all that follows before the semicolon and inserting the following: "will not result in reasonable further progress toward the attainment of applicable water quality standards under section 303 as expeditiously as possible but not later than 15 years after approval of the State program"; and

(C) in the text following subparagraph (D)—

(i) by striking "3 months" and inserting "6 months"; and

(ii) by inserting "or portion thereof" before "within three months of receipt".

(3) FAILURE TO SUBMIT REPORT.—Section 319(d)(3) is amended—

(A) by striking "the report" and inserting "a report or revised report";

(B) by striking "30 months" and inserting "18 months"; and

(C) by striking "of the enactment of this section" and inserting "on which such report is required to be submitted under subsection (a)".

(4) PROGRAM MANAGEMENT BY THE ADMINISTRATOR.—Section 319(d) is amended by adding at the end the following:

"(4) FAILURE OF STATE TO SUBMIT PROGRAM.—

"(A) PROGRAM MANAGEMENT BY THE ADMINISTRATOR.—If a State fails to submit a management program or revised management program under subsection (b) or the Administrator disapproves such management program, the Administrator shall prepare and implement a management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters in accordance with subsection (b).

"(B) NOTICE AND HEARING.—If the Administrator intends to disapprove a program submitted by a State, the Administrator shall first notify the Governor of the State in writing of the modifications necessary to meet the requirements of this section. The Administrator shall provide adequate public notice and an opportunity for a public hearing for all interested parties.

"(C) STATE REVISION OF ITS PROGRAM.—If, after taking into account the level of funding actually provided as compared with the level authorized under subsection (j), the Administrator determines that a State has failed to demonstrate reasonable further progress toward the attainment of water quality standards as required, the State shall revise its program within 12 months of that determination in a manner sufficient to achieve attainment of applicable water quality standards by the deadline established by this Act. If a State fails to make such a program revision or the Administrator disapproves such a revision, the Administrator shall prepare and implement a nonpoint source management program for the State.".

(e) TECHNICAL ASSISTANCE.—Section 319(f) is amended by inserting "and implementing" after "developing".

(f) GRANT PROGRAM.—

(1) IN GENERAL.—Section 319(h)(1) is amended—

(A) by amending the paragraph heading to read as follows: "GRANTS FOR PREPARATION AND IMPLEMENTATION OF REPORTS AND MANAGEMENT PROGRAMS.—";

(B) by striking "for which a report submitted under subsection (a) and a management program submitted under subsection (b) is approved under this section";

(C) by striking "the Administrator shall make grants" and inserting "the Administrator may make grants under this subsection";

(D) by striking "under this subsection to such State" and inserting "to such State";

(E) by striking "implementing such management program" and inserting "preparing a report under subsection (a) and in preparing and implementing a management program under subsection (b)";

(F) by inserting after the first sentence the following: "Grants for implementation of such management program may be made only after such report and management program are approved under this section."; and

(G) by adding at the end the following: "The Administrator is authorized to provide funds to a State if necessary to implement an approved portion of a State program or, with the approval of the Governor of the State, to implement a component of a federally established program. The Administrator may continue to make grants to any State with an program approved on the day before the date of the enactment of the Clean Water Amendments of 1995 until the Administrator withdraws the approval of such program or the State fails to submit a revision of such program in accordance with subsection (c)(2).".

(2) FEDERAL SHARE.—Section 319(h)(3) is amended—

(A) by striking "management program implemented" and inserting "report prepared and management program prepared and implemented";

(B) by striking "60 percent" and inserting "75 percent";

(C) by striking "implementing such management program" and inserting "preparing such report and preparing and implementing such management program"; and

(D) by inserting "of program implementation" after "non-Federal share".

(3) LIMITATION ON GRANT AMOUNTS.—Section 319(h)(4) is amended—

(A) by inserting before the first sentence the following: "The Administrator shall establish, after consulting with the States, maximum and minimum grants for any fiscal year to promote equity between States and effective nonpoint source management."; and

(B) by adding at the end the following: "The minimum percentage of funds allocated to each State shall be 0.5 percent of the amount appropriated.".

(4) ALLOCATION OF GRANT FUNDS.—Paragraph (5) of section 319(h) is amended to read as follows:

"(5) ALLOCATION OF GRANT FUNDS.—Grants under this section shall be allocated to States with approved programs in a fair and equitable manner and be based upon rules and regulations promulgated by the Administrator which shall take into account the extent and nature of the nonpoint sources of pollution in each State and other relevant factors.".

(5) USE OF FUNDS.—Paragraph (7) of section 319(h) is amended to read as follows:

"(7) USE OF FUNDS.—A State may use grants made available to the State pursuant to this section for activities relating to nonpoint source water pollution control, including—

"(A) providing financial assistance with respect to those activities whose principal purpose is protecting and improving water quality;

"(B) assistance related to the cost of preparing or implementing the State management program;

"(C) providing incentive grants to individuals to implement a site-specific water quality plan in amounts not to exceed 75 percent of the cost of the project from all Federal sources;

"(D) land acquisition or conservation easements consistent with a site-specific water quality plan; and

"(E) restoring and maintaining the chemical, physical, and biological integrity of urban and rural waters and watersheds (including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish, and wildlife, aquatic and riparian vegetation, and recreational activities in and on the water) and protecting designated uses, including fishing, swimming, and drinking water supply.".

(6) COMPLIANCE WITH STATE MANAGEMENT PROGRAM.—Paragraph (8) of section 319(h) is amended to read as follows:

"(8) COMPLIANCE WITH STATE MANAGEMENT PROGRAM.—In any fiscal year for which the Administrator determines that a State has not made satisfactory progress in the preceding fiscal year in meeting the schedule specified for such State under subsection (b)(2)(C), the Administrator is authorized to withhold grants pursuant to this section in whole or in part to the State after adequate written notice is provided to the Governor of the State.".

(7) ALLOTMENT STUDY.—Section 319(h) is amended by adding at the end the following:

"(13) ALLOTMENT STUDY.—

"(A) STUDY.—The Administrator, in consultation with the States, shall conduct a study of whether the allocation of funds under paragraph (5) appropriately reflects the needs and costs of nonpoint source control measures for different nonpoint source categories and subcategories and of options for better reflecting such needs and costs in the allotment of funds.

"(B) REPORT.—Not later than 5 years after the date of the enactment of the Clean Water Amendments of 1995, the Administrator shall transmit to Congress a report on the results of the study conducted under this subsection, together with recommendations.".

(g) GRANTS FOR PROTECTING GROUND WATER QUALITY.—Section 319(i)(3) is amended by striking "$150,000" and inserting "$500,000".

(h) AUTHORIZATION OF APPROPRIATIONS.—Section 319(j) is amended—

(1) by striking "and" before "$130,000,000";

(2) by inserting after "1991" the following: ", such sums as may be necessary for fiscal years 1992 through 1995, $100,000,000 for fiscal year 1996, $150,000,000 for fiscal year 1997, $200,000,000 for fiscal year 1998, $250,000,000 for fiscal year 1999, and $300,000,000 for fiscal year 2000"; and

(3) by striking "$7,500,000" and inserting "$25,000,000".

(i) CONSISTENCY OF OTHER PROGRAMS AND PROJECTS WITH MANAGEMENT PROGRAMS.—Section 319(k) (33 U.S.C. 1329(k)) is amended—

(1) by striking "allow States to review" and inserting "require coordination with States in";

(2) by inserting before the period at the end the following: "and the State watershed management program"; and

(3) by adding at the end the following: "Federal agencies that own or manage land, or issue licenses for activities that cause nonpoint source pollution from such land, shall coordinate their nonpoint source control measures with the State nonpoint source management program and the State watershed management program. A Federal agency and the Governor of an affected State shall enter into a memorandum of understanding to carry out the purposes of this paragraph. Such a memorandum of understanding shall not relieve the Federal agency of the agency's obligation to comply with its own mandates.".

(j) REPORTS OF THE ADMINISTRATOR.—

(1) BIENNIAL REPORTS.—Section 319(m)(1) is amended—

(A) in the paragraph heading by striking "ANNUAL" and inserting "BIENNIAL"; and

(B) by striking "1988, and each January 1" and inserting "1995, and biennially".

(2) CONTENTS.—Section 319(m)(2) is amended—

(A) by striking the paragraph heading and all that follows before "at a minimum" and inserting "CONTENTS.—Each report submitted under paragraph (1),";

(B) in subparagraph (A) by striking "best management practices" and inserting "measures"; and

(C) in subparagraph (B) by striking "best management practices" and inserting "the measures provided by States under subsection (b)".

(k) SET ASIDE FOR ADMINISTRATIVE PERSONNEL.—Section 319(n) is amended by striking "less" and inserting "more".

(l) GUIDANCE ON MODEL MANAGEMENT PRACTICES AND MEASURES.—Section 319 is further amended by adding at the end the following:

"(o) GUIDANCE ON MODEL MANAGEMENT PRACTICES AND MEASURES.—

"(1) IN GENERAL.—The Administrator shall publish guidance to identify model management practices and measures which may be undertaken, at the discretion of the State or appropriate entity, under a management program established pursuant to this section.

"(2) CONSULTATION; PUBLIC NOTICE AND COMMENT.—The Administrator shall develop the model management practices and measures under paragraph (1) in consultation with the National Oceanic and Atmospheric Administration, other appropriate Federal and State departments and agencies, and academic institutions, private industry experts, and other individual experts in water conservation and planning, and after providing notice and opportunity for public comment.

"(3) PUBLICATION.—The Administrator shall publish proposed guidance under this subsection not later than 6 months after the date of the enactment of this subsection and shall publish final guidance under this subsection not later than 18 months after such date of enactment. The Administrator shall periodically review and revise the final guidance at least once every 3 years after its publication.

"(4) MODEL MANAGEMENT PRACTICES AND MEASURES DEFINED.—For the purposes of this subsection, the term 'model management practices and measures' means economically achievable measures for the control of the addition of pollutants from nonpoint sources of pollution which reflect the greatest degree of pollutant reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives. The Administrator may distinguish among classes, types, and sizes within any category of nonpoint sources.".

(m) INADEQUATE FUNDING.—Section 319 is further amended by adding at the end the following:

"(p) INADEQUATE FUNDING.—For each fiscal year beginning after the date of the enactment of this subsection for which the total of amounts appropriated to carry out this section are less than the total of amounts authorized to be appropriated pursuant to subsection (j), the deadline for compliance with any requirement of this section, including any deadline relating to assessment reports or State program implementation or monitoring efforts, shall be postponed by 1 year, unless the Administrator and the State jointly certify that the amounts appropriated are sufficient to meet the requirements of this section.".

(n) COASTAL NONPOINT POLLUTION CONTROL PROGRAMS.—

(1) REPEAL.—Section 6217 of the Omnibus Budget Reconciliation Act of 1990 (16 U.S.C. 1455b) is repealed.

(2) INCLUSION OF COASTAL MANAGEMENT PROVISIONS IN NONPOINT PROGRAM.—Section 319 is amended—

(A) in subsection (a)(1)—

(i) by striking "and" at the end of subparagraph (C);

(ii) by striking the period at the end of subparagraph (D) and inserting "(including State management programs approved under section 306 of the Coastal Zone Management Act of 1972); and"; and

(iii) by adding at the end the following:

"(E) identifies critical areas, giving consideration to the variety of natural, commercial, recreational, ecological, industrial, and aesthetic resources of immediate and potential value to the present and future of the Nation's waters in the Coastal Zone.";

(B) in subsection (a)(2) by inserting "any management program of the State approved under section 306 of the Coastal Zone Management Act of 1972," after "314,";

(C) in subsection (b)(2) by adding after subparagraph (I), as added by subsection (b) of this section, the following:

"(J) For coastal areas, the identification of, and continuing process for identifying, land uses which individually or cumulatively may cause or contribute significantly to degradation of—

"(i) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protected designated uses, as determined by the State pursuant to the State's water quality planning processes or watershed planning efforts; and

"(ii) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings."; and

(D) in subsection (c)(1) by inserting "or coastal zone management agencies" after "planning agencies".

(o) AGRICULTURAL INPUTS.—Section 319 is further amended by adding at the end the following:

"(q) AGRICULTURAL INPUTS.—For the purposes of this Act, any land application of livestock manure shall not be considered a point source and shall be subject to enforcement only under this section.".

(p) PURPOSE.—Section 319 (33 U.S.C. 1329) is further amended by adding at the end the following:

"(r) PURPOSE.—The purpose of this section is to assist States in addressing nonpoint sources of pollution where necessary to achieve the goals and requirements of this Act. It is recognized that State nonpoint source programs need to be built upon a foundation that voluntary initiatives represent the approach most likely to succeed in achieving the objectives of this Act.".

SEC. 320. NATIONAL ESTUARY PROGRAM.

(a) TECHNICAL AMENDMENT.—Section 320(a)(2)(B) (33 U.S.C. 1330(a)(2)(B)) is amended to read as follows:

"(B) PRIORITY CONSIDERATION.—The Administrator shall give priority consideration under this section to Long Island Sound, New York and Connecticut; Narragansett Bay, Rhode Island; Buzzards Bay, Massachusetts; Massachusetts Bay, Massachusetts (including Cape Cod Bay and Boston Harbor); Puget Sound, Washington; New York-New Jersey Harbor, New York and New Jersey; Delaware Bay, Delaware and New Jersey; Delaware Inland Bays, Delaware; Albemarle Sound, North Carolina; Sarasota Bay, Florida; San Francisco Bay, California; Santa Monica Bay, California; Galveston Bay, Texas; Barataria-Terrebonne Bay estuary complex, Louisiana; Indian River Lagoon, Florida; Charlotte Harbor, Florida; Barnegat Bay, New Jersey; and Peconic Bay, New York.".

(b) GRANTS.—Section 320(g)(2) (33 U.S.C. 1330(g)(2)) is amended by inserting "and implementation monitoring" after "development".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 320(i) (33 U.S.C. 1330(i)) is amended by striking "1987" and all that follows through "1991" and inserting the following: "1987 through 1991, such sums as may be necessary for fiscal years 1992 through 1995, and $19,000,000 per fiscal year for each of fiscal years 1996 through 2000".

SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.

(a) ESTABLISHMENT.—Title III (33 U.S.C. 1311–1330) is amended by adding at the end the following:

"SEC. 321. STATE WATERSHED MANAGEMENT PROGRAMS.

"(a) STATE WATERSHED MANAGEMENT PROGRAM.—

"(1) SUBMISSION OF PROGRAM TO ADMINISTRATOR.—A State, at any time, may submit a watershed management program to the Administrator for approval.

"(2) APPROVAL.—If the Administrator does not disapprove a State watershed management program within 180 days of its submittal or 240 days of a request for a public hearing pursuant to paragraph (3) with respect to the program, whichever is later, such program shall be deemed approved for the purposes of this section. The Administrator shall approve the program if the program includes, at a minimum, the following elements:

"(A) The identification of the State agency with primary responsibility for overseeing and approving watershed management plans in general.

"(B) The description of any responsible entities (including any appropriate State agency or substate agency) to be utilized in implementing the program and a description of their responsibilities.

"(C) A description of the scope of the program. In establishing the scope of the program, the State may address one or more watersheds, or pollutants, concurrently or sequentially. The scope of the State program may expand over time with respect to the watersheds, pollutants, and factors to be addressed under the program. In developing the State program, the State shall take into account all regional and local government watershed management programs that are consistent with the proposed State program and shall consult with the regional and local governments that developed such programs. The State shall consider recommendations from units of general purpose government, special purpose districts, local water suppliers, and appropriate water management agencies in the development and scope of the program.

"(D) Provisions for carrying out an analysis, consistent with the established scope of the program, of the problems within each watershed covered under the program.

"(E) An identification of watershed management units for which management plans will be developed, taking into consideration those waters where water quality is threatened or impaired or otherwise in need of special protection. A watershed management unit identified under the program may include waters and associated land areas in more than 1 State if the Governors of the States affected jointly designate the watershed management unit and may include waters and associated lands managed or owned by the Federal Government.

"(F) A description of the activities required of responsible entities (as specified under subsection (e)(1)) and a description of the watershed plan approval process of the State.

"(G) Documentation of the public participation in development of the program and description of the procedures that will be used for public participation in the development and implementation of watershed plans.

"(H) The identification of goals that will be pursued in each watershed, including attainment of State water quality standards (including site-specific water quality standards) and the goals and objectives of this Act.

"(I) An exclusion from the program of federally approved activities with respect to linear utility facilities, such as natural gas pipelines if such facilities extend to multiple watersheds and result in temporary or de minimis impacts.

"(J) A description of the process for consideration of and achieving consistency with the purposes of sections 319 and 322.

"(3) DISAPPROVAL PROCESS.—If the Administrator intends to disapprove a program of a State submitted under this subsection, the Administrator shall by a written notification advise the State of the intent to disapprove and the reasons for disapproval. If, within 30 days of receipt of such notice, a State so requests, the

Administrator shall conduct a public hearing in the State on the intent to disapprove and the reasons for such disapproval. A State may resubmit a revised program that addresses the reasons contained in the notification. If a State requests a public hearing, the Administrator shall conduct the hearing in that State and issue a final determination within 240 days of receipt of the State watershed management program submittal.

"(4) MODIFICATION OF PROGRAM.—Each State with a watershed management program that has been approved by the Administrator under this section may, at any time, modify the watershed management program. Any such modification shall be submitted to the Administrator and shall remain in effect unless and until the Administrator determines that the modified program no longer meets the requirements of this section. In such event, the provisions of paragraph (3) shall apply.

"(5) STATUS REPORTS.—Each State with a watershed management program that has been approved by the Administrator pursuant to this subsection shall, not later than 1 year after the date of approval, and annually thereafter, submit to the Administrator an annual watershed program summary status report that includes descriptions of any modifications to the program. The status report shall include a listing of requests made for watershed plan development and a listing of plans prepared and submitted by local or regional entities and the actions taken by the State on such plans including the reasons for those actions. In consultation and coordination with the Administrator, a State may use the report to satisfy, in full or in part, any reporting requirements under sections 106, 303(d), 305(b), 314, 319, 320, 322, and 604(b).

"(b) WATERSHED AREA IN 2 OR MORE STATES.—If a watershed management unit is designated to include land areas in more than 1 State, the Governors of States having jurisdiction over any lands within the watershed management unit shall jointly determine the responsible entity or entities.

"(c) ELIGIBLE WATERSHED MANAGEMENT AND PLANNING ACTIVITIES.—

"(1) IN GENERAL.—In addition to activities eligible to receive assistance under other sections of this Act as of the date of the enactment of this subsection, the following watershed management activities conducted by or on behalf of the States pursuant to a watershed management program that is approved by the Administrator under this section shall be considered to be eligible to receive assistance under sections 106, 205(j), 319(h), 320, and 604(b):

"(A) Characterizing the waters and land uses.

"(B) Identifying and evaluating problems within the watershed.

"(C) Selecting short-term and long-term goals for watershed management.

"(D) Developing and implementing water quality standards, including site-specific water quality standards.

"(E) Developing and implementing measures and practices to meet identified goals.

"(F) Identifying and coordinating projects and activities necessary to restore or maintain water quality or other related environmental objectives within the watershed.

"(G) Identifying the appropriate institutional arrangements to carry out a watershed management plan that has been approved or adopted by the State under this section.

"(H) Updating the plan.

"(I) Conducting training and public participation activities.

"(J) Research to study benefits of existing watershed program plans and particular aspects of the plans.

"(K) Implementing any other activity considered appropriate by the Administrator or the Governor of a State with an approved program.

"(2) FACTORS TO BE CONSIDERED.—In selecting watershed management activities to receive assistance pursuant to paragraph (1), the following factors shall be considered:

"(A) Whether or not the applicant has demonstrated success in addressing water quality problems with broadbased regional support, including public and private sources.

"(B) Whether the activity will promote watershed problem prioritization.

"(C) Whether or not the applicant can demonstrate an ability to use Federal resources to leverage non-Federal public and private monetary and in-kind support from voluntary contributions, including matching and cost sharing incentives.

"(D) Whether or not the applicant proposes to use existing public and private programs to facilitate water quality improvement with the assistance to be provided pursuant to paragraph (1).

"(E) Whether or not such assistance will be used to promote voluntary activities, including private wetlands restoration, mitigation banking, and pollution prevention to achieve water quality standards.

"(F) Whether or not such assistance will be used to market mechanisms to enhance existing programs.

"(d) PUBLIC PARTICIPATION.—Each State shall establish procedures to encourage the public to participate in its program and in developing and implementing comprehensive watershed management plans under this section. A State watershed management program shall include a process for public involvement in watershed management, to the maximum extent practicable, including the formation and participation of public advisory groups during State watershed program development. States must provide adequate public notice and an opportunity to comment on the State watershed program prior to submittal of the program to the Administrator for approval.

"(e) APPROVED OR STATE-ADOPTED PLANS.—

"(1) REQUIREMENTS.—A State with a watershed management program that has been approved by the Administrator under this section may approve or adopt a watershed management plan if the plan satisfies the following conditions:

"(A) If the watershed includes waters that are not meeting water quality standards at the time of submission, the plan—

"(i) identifies the objectives of the plan, including, at a minimum, State water quality standards (including site-specific water quality standards) and goals and objectives under this Act;

"(ii) identifies pollutants, sources, activities, and any other factors causing the impairment of the waters;

"(iii) identifies cost effective actions that are necessary to achieve the objectives of the plan, including reduction of pollutants to achieve any allocated load reductions consistent with the requirements of section 303(d), and the priority for implementing the actions;

"(iv) contains an implementation schedule with milestones and the identification of persons responsible for implementing the actions;

"(v) demonstrates that water quality standards and other goals and objectives of this Act will be attained as expeditiously as practicable but not later than any applicable deadline under this Act;

"(vi) contains documentation of the public participation in the development of the plan and a description of the public participation process that will be used during the plan implementation;

"(vii) specifies a process to monitor and evaluate progress toward meeting of the goals of the plan; and

"(viii) specifies a process to revise the plan as necessary.

"(B) For waters in the watershed attaining water quality standards at the time of submission (including threatened waters), the plan identifies the projects and activities necessary to maintain water quality standards and attain or maintain other goals after the date of approval or adoption of the plan.

"(2) TERMS OF APPROVED OR ADOPTED PLAN.—Each plan that is approved or adopted by a State under this subsection shall be effective for a period of not more than 10 years and include a planning and implementation schedule with milestones within that period. A revised and updated plan may be approved or adopted by the State prior to the expiration of the period specified in the plan pursuant to the same conditions and requirements that apply to an initial plan for a watershed approved under this subsection.

"(f) GUIDANCE.—Not later than 1 year after the date of the enactment of this section, the Administrator, after consultation with the States and other interested parties, shall issue guidance on provisions that States may consider for inclusion in watershed management programs and State-approved or State-adopted watershed management plans under this section.

"(g) POLLUTANT TRANSFER OPPORTUNITIES.—

"(1) POLLUTANT TRANSFER PILOT PROJECTS.—Under an approved watershed management program, any discharger or source may apply to a State for approval to offset the impact of its discharge or release of a pollutant by entering into arrangements, including the payment of funds, for the implementation of controls or measures by another discharger or source through a pollution reduction credits trading program established as part of the watershed management plan. The State may approve such a request if appropriate safeguards are included to ensure compliance with technology based controls and to protect the quality of receiving waters.

"(2) INCENTIVE GRANTS.—The Administrator shall allocate sums made available by appropriations to carry out pollution reduction credits trading programs in selected watersheds throughout the country.

"(3) REPORT.—Not later than 36 months after the date of the enactment of this Act, the Administrator shall transmit to Congress a report on the results of the program conducted under this subsection.".

(b) INCENTIVES FOR WATERSHED MANAGEMENT.—

(1) POINT SOURCE PERMITS.—Section 402 (33 U.S.C. 1342) is further amended by adding at the end the following:

"(r) WATERSHED MANAGEMENT.—

"(1) IN GENERAL.—Notwithstanding any other provision of this Act, a permit may be issued under this section with a limitation that does not meet applicable water quality standards if—

"(A) the receiving water is in a watershed with a watershed management plan that has been approved pursuant to section 321;

"(B) the plan includes assurances that water quality standards will be met within the watershed by a specified date; and

"(C) the point source does not have a history of significant noncompliance with its effluent limitations under a permit issued under this section, as determined by the Administrator or a State with authority to issue permits under this section.

"(2) SYNCHRONIZED PERMIT TERMS.—Notwithstanding subsection (b)(1)(B), the term of a permit issued under this section may be extended for an additional period if the discharge is located in a watershed management unit for which a watershed management plan will be developed pursuant to section 321. Permits extended under this paragraph shall be synchronized with the approval of the watershed

management plan of a State adopted pursuant to section 321.".

(2) MULTIPURPOSE GRANTS.—

(A) IN GENERAL.—The Administrator may provide assistance to a State with a watershed management program that has been approved by the Administrator under section 321 in the form of a multipurpose grant that would provide for single application, work plan and review, matching, oversight, and end-of-year closeout requirements for grant funding under sections 104(b)(3), 104(g), 106, 314(b), 319, 320, and 604(b) of the Federal Water Pollution Control Act.

(B) TERMS.—The Administrator may attach terms that shall apply for more than 1 year to grants made pursuant to this paragraph. A State that receives a grant under this paragraph may focus activities funded under the provisions referred to in subparagraph (A) on a priority basis in a manner consistent with watershed management plans approved by the State under section 321(e) of the Federal Water Pollution Control Act.

(3) PLANNING.—Section 604(b) (33 U.S.C. 1384(b)) is amended by adding at the end the following: "In any fiscal year in which a State is implementing a State watershed management program approved under section 321, the State may reserve up to an additional 2 percent of the sums allotted to the State for such fiscal year for development of watershed management plans under such program or $200,000, whichever is greater, if 50 percent of the amount reserved under this sentence will be made available to local entities.".

SEC. 322. STORMWATER MANAGEMENT PROGRAMS.

(a) STATE PROGRAMS.—Title III (33 U.S.C. 1311 et seq.) is further amended by adding at the end the following new section:

"SEC. 322. STORMWATER MANAGEMENT PROGRAMS.

"(a) PURPOSE.—The purpose of this section is to assist States in the development and implementation of stormwater control programs in an expeditious and cost effective manner so as to enable the goals and requirements of this Act to be met in each State no later than 15 years after the date of approval of the stormwater management program of the State. It is recognized that State stormwater management programs need to be built on a foundation that voluntary pollution prevention initiatives represent an approach most likely to succeed in achieving the objectives of this Act.

"(b) STATE ASSESSMENT REPORTS.—

"(1) CONTENTS.—After notice and opportunity for public comment, the Governor of each State, consistent with or as part of the assessment required by section 319, shall prepare and submit to the Administrator for approval, a report which—

"(A) identifies those navigable waters within the State which, without additional action to control pollution from stormwater discharges, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this Act;

"(B) identifies those categories and subcategories of stormwater discharges that add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

"(C) describes the process, including intergovernmental coordination and public participation, for identifying measures to control pollution from each category and subcategory of stormwater discharges identified in subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such discharges; and

"(D) identifies and describes State, local, and as may be appropriate, industrial programs for controlling pollution added from stormwater discharges to, and improving the quality of, each such portion of the navigable waters.

"(2) INFORMATION USED IN PREPARATION.—In developing, reviewing, and revising the report required by this subsection, the State—

"(A) may rely upon information developed pursuant to sections 208, 303(e), 304(f), 305(b), 314, 319, 320, and 321 and subsection (h) of this section, information developed from the group stormwater permit application process in effect under section 402(p) of this Act on the day before the date of the enactment of this Act, and such other information as the State determines is appropriate; and

"(B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 208(b) and 303, to the extent such elements are consistent with and fulfill the requirements of this section.

"(3) REVIEW AND REVISION.—Not later than 18 months after the date of the enactment of the Clean Water Amendments of 1995, and every 5 years thereafter, the State shall review, revise, and submit to the Administrator the report required by this subsection.

"(c) STATE MANAGEMENT PROGRAMS.—

"(1) IN GENERAL.—In substantial consultation with local governments and after notice and opportunity for public comment, the Governor of each State for the State or in combination with the Governors of adjacent States shall prepare and submit to the Administrator for approval a stormwater management program based on available information which the State proposes to implement in the first 5 fiscal years beginning after the date of submission of such management program for controlling pollution added from stormwater discharges to the navigable waters within the boundaries of the State and improving the quality of such waters.

"(2) SPECIFIC CONTENTS.—Each management program proposed for implementation under this subsection shall include the following:

"(A) IDENTIFICATION OF MODEL MANAGEMENT PRACTICES AND MEASURES.—Identification of the model management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category or subcategory of stormwater discharges designated under subsection (b)(1)(B), taking into account the impact of the practice and measure on ground water quality.

"(B) IDENTIFICATION OF PROGRAMS AND RESOURCES.—Identification of programs and resources necessary (including, as appropriate, nonregulatory programs or regulatory programs, enforceable policies and mechanisms, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to manage categories or subcategories of stormwater discharges to the degree necessary to provide for reasonable further progress toward the goal of attainment of water quality standards which contain the stormwater criteria established under subsection (i) for designated uses of receiving waters identified under subsection (b)(1)(A) taking into consideration specific watershed conditions, by not later than the last day of the 15-year period beginning on the date of approval of the State program.

"(C) PROGRAM FOR INDUSTRIAL, COMMERCIAL, OIL, GAS, AND MINING DISCHARGES.—A program for categories or subcategories of industrial, commercial, oil, gas, and mining stormwater discharges identified under subsection (b)(1)(B) for the implementation of management practices, measures, and programs identified under subparagraphs (A) and (B). The program shall include each of the following:

"(i) VOLUNTARY ACTIVITIES.—Voluntary stormwater pollution prevention activities for categories and subcategories of such stormwater discharges that are not contaminated by contact with material handling equipment or activities, heavy industrial machinery, raw materials, intermediate products, finished products, byproducts, or waste products at the site of the industrial, commercial, oil, gas, or mining activity. Such discharges may have incidental contact with buildings or motor vehicles.

"(ii) ENFORCEABLE PLANS.—Enforceable stormwater pollution prevention plans meeting the requirements of subsection (d) for those categories and subcategories of such stormwater discharges that are not described in clause (i).

"(iii) GENERAL PERMITS.—General permits for categories and subcategories of such stormwater discharges if the State finds, based on available information and after providing notice and an opportunity for comment, that reasonable further progress toward achieving water quality standards in receiving waters identified by the State by the date referred to in subparagraph (B) cannot be made despite implementation of voluntary activities under clause (i) or prevention plans under clause (ii) due to the presence of a pollutant or pollutants identified by the State. A facility in a category or subcategory identified by the State shall not be subject to a general permit under this clause if the facility demonstrates that stormwater discharges from the facility are not contributing to a violation of a water quality standard established for designated uses of the receiving waters and are not significantly contributing the pollutant or pollutants identified by the State with respect to the receiving waters under this clause.

"(iv) SITE-SPECIFIC PERMITS.—Site-specific permits for categories or subcategories of such stormwater discharges or individual facilities in such categories or subcategories if the State finds, based on available information and after providing notice and an opportunity for comment, that reasonable further progress toward achieving water quality standards in receiving waters identified by the State by the date referred to in subparagraph (B) cannot be made despite implementation of voluntary activities under clause (i) or prevention plans under clause (ii) and general permits under clause (iii) due to the presence of a pollutant or pollutants identified by the State. A facility in a category or subcategory identified by the State shall not be subject to a site-specific permit under this clause if the facility demonstrates that stormwater discharges from the facility are not contributing to a violation of a water quality standard established for designated uses of the receiving waters and are not significantly contributing the pollutant or pollutants identified by the State with respect to the receiving waters under this clause.

"(v) EXEMPTION OF SMALL BUSINESSES.—An exemption for small businesses identified under subsection (b)(1)(B) from clause (iii), relating to general permits, and clause (iv), relating to site-specific permits, unless the State finds that, without the imposition of such permits, such discharges will have a significant adverse effect on water quality.

"(D) PROGRAM FOR MUNICIPAL DISCHARGES.—A program for municipal stormwater discharges identified under subsection (b)(1)(B) to reduce pollutant loadings from categories and subcategories of municipal stormwater discharges.

"(E) PROGRAM FOR CONSTRUCTION ACTIVITIES.—A program for categories and subcategories of stormwater discharges from construction activities identified under subsection (b)(1)(B) for implementation of management practices, measures, and programs identified under subparagraphs (A) and (B). In developing the program, the State shall consider current State and local requirements, focus on pollution prevention through the use of model management practices and measures, and take into account the land area disturbed by the construction activities. The State may require effluent

limits or other numerical standards to control pollutants in stormwater discharges from construction activities only if the State finds, after providing notice and an opportunity for comment, that such standards are necessary to achieve water quality standards by the date referred to in subparagraph (B).

"(F) BAD ACTOR PROVISIONS.—Provisions for taking any actions deemed necessary by the State to meet the goals and requirements of this section with respect to dischargers which the State identifies, after notice and opportunity for hearing—

"(i) as having a history of stormwater noncompliance under this Act, State law, or the regulations issued thereunder or the terms and conditions of permits, orders, or administrative actions issued pursuant thereto; or

"(ii) as posing an imminent threat to human health and the environment.

"(G) SCHEDULE.—A schedule containing interim goals and milestones for making reasonable progress toward the attainment of standards as set forth in subparagraph (B) established for the designated uses of receiving waters, taking into account specific watershed conditions, which may be demonstrated by one or any combination of improvements in water quality (including biological indicators), documented implementation of voluntary stormwater discharge control measures, or adoption of enforceable stormwater discharge control measures.

"(H) CERTIFICATION OF ADEQUATE AUTHORITY.—

"(i) IN GENERAL.—A certification by the Attorney General of the State or States (or the chief attorney of any State water pollution control agency that has authority under State law to make such certification) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program.

"(ii) COMMITMENT.—A schedule for seeking, and a commitment by the State or States to seek, such additional authorities as expeditiously as practicable.

"(I) IDENTIFICATION OF FEDERAL FINANCIAL ASSISTANCE PROGRAMS.—An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's stormwater management program.

"(J) MONITORING.—A description of the monitoring of navigable waters or other assessment which will be carried out under the program for the purposes of monitoring and assessing the effectiveness of the program, including the attainment of interim goals and milestones.

"(K) IDENTIFICATION OF CERTAIN INCONSISTENT FEDERAL ACTIVITIES.—An identification of activities on Federal lands in the State that are inconsistent with the State management program.

"(L) IDENTIFICATION OF GOALS AND MILESTONES.—An identification of goals and milestones for progress in attaining water quality standards, including a projected date for attaining such standards as expeditiously as practicable but not later than 15 years after the date of approval of the State program for each of the waters listed pursuant to subsection (b).

"(3) UTILIZATION OF LOCAL AND PRIVATE EXPERTS.—In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in stormwater management.

"(4) DEVELOPMENT ON WATERSHED BASIS.—A State shall, to the maximum extent practicable, develop and implement a stormwater management program under this subsection on a watershed-by-watershed basis within such State.

"(5) REGULATIONS DEFINING SMALL BUSINESSES.—The Administrator shall propose, not later than 6 months after the date of the enactment of this section, and issue, not later than 1 year after the date of such enactment, regulations to define small businesses for purposes of this section.

"(d) STORMWATER POLLUTION PREVENTION PLANS.—

"(1) IMPLEMENTATION DEADLINE.—Each stormwater pollution prevention plan required under subsection (c)(2)(C)(ii) shall be implemented not later than 180 days after the date of its development and shall be annually updated.

"(2) PLAN CONTENTS.—Each stormwater pollution prevention plan required under subsection (c)(2)(C)(ii) shall include the following components:

"(A) Establishment and appointment of a stormwater pollution prevention team.

"(B) Description of potential pollutant sources.

"(C) An annual site inspection evaluation.

"(D) An annual visual stormwater discharge inspection.

"(E) Measures and controls for reducing stormwater pollution, including, at a minimum, model management practices and measures that are flexible, technologically feasible, and economically practicable. For purposes of this paragraph, the term 'model management practices and measures' means preventive maintenance, good housekeeping, spill prevention and response, employee training, and sediment and erosion control.

"(F) Prevention of illegal discharges of nonstormwater through stormwater outfalls.

"(3) CERTIFICATION.—Each facility subject to subsection (c)(2)(C)(ii) shall certify to the State that it has implemented a stormwater pollution prevention plan or a State or local equivalent and that the plan is intended to reduce possible pollutants in the facility's stormwater discharges. The certification must be signed by a responsible officer of the facility and must be affixed to the plan subject to review by the appropriate State program authority. If a facility makes such a certification, such facility shall not be subject to permit or permit application requirements, mandatory model management practices and measures, analytical monitoring, effluent limitations or other numerical standards or guidelines under subsection (c)(2)(C)(ii).

"(4) PLAN ADEQUACY.—The State stormwater management program shall set forth the basis upon which the adequacy of a plan prepared by a facility subject to subsection (c)(2)(C)(ii) will be determined. In making such determination, the State shall consider benefits to the environment, physical requirements, technological feasibility and economic costs, human health or safety, and nature of the activity at the facility or site.

"(e) ADMINISTRATIVE PROVISIONS.—

"(1) COOPERATION REQUIREMENT.—Any report required by subsection (b) and any management program and report required by subsection (c) shall be developed in cooperation with local, substate, regional, and interstate entities which are responsible for implementing stormwater management programs.

"(2) TIME PERIOD FOR SUBMISSION OF MANAGEMENT PROGRAMS.—Each management program shall be submitted to the Administrator within 30 months of the issuance by the Administrator of the final guidance under subsection (l) and every 5 years thereafter. Each program submission after the initial submission following the date of the enactment of the Clean Water Amendments of 1995 shall include a demonstration of reasonable further progress toward the goal of attaining water quality standards as set forth in subsection (c)(2) established for designated uses of receiving waters taking into account specific watershed conditions by not later than the date referred to in subsection (b)(2)(B), including a documentation of the degree to which the State has achieved the interim goals and milestones contained in the previous program submission. Such demonstration shall take into account the adequacy of Federal funding under this section.

"(3) TRANSITION.—

"(A) IN GENERAL.—Permits, including group and general permits, issued pursuant to section 402(p), as in effect on the day before the date of the enactment of this section, shall remain in effect until the effective date of a State stormwater management program under this section. Stormwater dischargers shall continue to implement any stormwater management practices and measures required under such permits until such practices and measures are modified pursuant to this subparagraph or pursuant to a State stormwater management program. Prior to the effective date of a State stormwater management program, stormwater dischargers may submit for approval proposed revised stormwater management practices and measures to the State, in the case of a State with an approved program under section 402, or the Administrator. Upon notice of approval by the State or the Administrator, the stormwater discharger shall implement the revised stormwater management practices and measures which, for discharges subject to subsection (c)(2)(C)(i), (c)(2)(D), (c)(2)(E), or (c)(2)(F), may be voluntary pollution prevention activities. A stormwater discharger operating under a permit continued in effect under this subparagraph shall not be subject to citizens suits under section 505.

"(B) NEW FACILITIES.—A new nonmunicipal source of stormwater discharge subject to a group or general permit continued in effect under subparagraph (A) shall notify the State or the Administrator, as appropriate, of the source's intent to be covered by and shall continue to comply with such permit. Until the effective date of a State stormwater management program under this section, the State may impose enforceable stormwater management measures and practices on a new nonmunicipal source of stormwater discharge not subject to such a permit if the State finds that the stormwater discharge is likely to pose an imminent threat to human health and the environment or to pose significant impairment of water quality standards.

"(C) SPECIAL RULE.—Industrial facilities included in a Part 1 group stormwater permit application approved by the Administrator pursuant to section 122.26(c)(2) of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section, may, in lieu of continued operation under existing permits, certify to the State or the Administrator, as appropriate, that such facilities are implementing a stormwater pollution prevention plan consistent with subsection (d). Upon such certification, the facility will no longer be subject to such permit.

"(D) PRE-1987 PERMITS.—Notwithstanding the repeal of section 402(p) by the Clean Water

Amendments Act of 1995 or any other amendment made to section 402 on or before the date of the enactment of such Act, a discharge with respect to which a permit has been issued under section 402 before February 4, 1987, shall not be subject to the provisions of this section.

"(E) ANTIBACKSLIDING.—Section 402(o) shall not apply to any activity carried out in accordance with this paragraph.

"(f) APPROVAL OR DISAPPROVAL OF REPORTS OR MANAGEMENT PROGRAMS.—

"(1) DEADLINE.—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or revised report or management program under this section, the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.

"(2) PROCEDURE FOR DISAPPROVAL.—If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that—

"(A) the proposed management program or any portion thereof does not meet the requirements of subsection (b) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this Act;

"(B) adequate authority does not exist, or adequate resources are not available, to implement such program or portion; or

"(C) the practices and measures proposed in such program or portion will not result in reasonable progress toward the goal of attainment of applicable water quality standards as set forth in subsection (c)(2) established for designated uses of receiving waters taking into consideration specific watershed conditions as expeditiously as possible but not later than 15 years after approval of a State stormwater management program under this section;

the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall have an additional 6 months to submit its revised management program, and the Administrator shall approve or disapprove such revised program within 3 months of receipt.

"(3) FAILURE OF STATE TO SUBMIT REPORT.—If a Governor of a State does not submit a report or revised report required by subsection (b) within the period specified by subsection (e)(2), the Administrator shall, within 18 months after the date on which such report is required to be submitted under subsection (b), prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (b). Upon completion of the requirement of the preceding sentence and after notice and opportunity for a comment, the Administrator shall report to Congress of the actions of the Administrator under this section.

"(4) FAILURE OF STATE TO SUBMIT MANAGEMENT PROGRAM.—

"(A) PROGRAM MANAGEMENT BY ADMINISTRATOR.—Subject to paragraph (5), if a State fails to submit a management program or revised management program under subsection (c) or the Administrator does not approve such management program, the Administrator shall prepare and implement a management program for controlling pollution added from stormwater discharges to the navigable waters within the State and improving the quality of such waters in accordance with subsection (c).

"(B) NOTICE AND HEARING.—If the Administrator intends to disapprove a program submitted by a State the Administrator shall first notify the Governor of the State, in writing, of the modifications necessary to meet the requirements of this section. The Administrator shall provide adequate public notice and an opportunity for a public hearing for all interested parties.

"(C) STATE REVISION OF ITS PROGRAM.—If, after taking into account the level of funding actually provided as compared with the level authorized, the Administrator determines that a State has failed to demonstrate reasonable further progress toward the attainment of water quality standards as required, the State shall revise its program within 12 months of that determination in a manner sufficient to achieve attainment of applicable water quality standards by the deadline established by this section. If a State fails to make such a program revision or the Administrator does not approve such a revision, the Administrator shall prepare and implement a stormwater management program for the State.

"(5) LOCAL MANAGEMENT PROGRAMS; TECHNICAL ASSISTANCE.—If a State fails to submit a management program under subsection (c) or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (c) and can be approved pursuant to this subsection. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval.

"(g) INTERSTATE MANAGEMENT CONFERENCE.—

"(1) CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.—

"(A) CONVENING OF CONFERENCE.—If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of pollution from stormwater in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from stormwater to such portion.

"(B) NOTIFICATION.—If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or in part, of significant pollution from stormwater in another State, the Administrator shall notify such States.

"(C) TIME LIMIT.—The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification under subparagraph (B), whether or not the State which is not meeting such standards requests such conference.

"(D) PURPOSE.—The purpose of the conference shall be to develop an agreement among the States to reduce the level of pollution resulting from stormwater in the portion of the navigable waters and to improve the water quality of such portion.

"(E) PROTECTION OF WATER RIGHTS.—Nothing in the agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws.

"(F) LIMITATIONS.—This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act. The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 505 of this Act.

"(2) STATE MANAGEMENT PROGRAM REQUIREMENT.—To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this Act will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.

"(h) GRANTS FOR STORMWATER RESEARCH.—

"(1) IN GENERAL.—To determine the most cost-effective and technologically feasible means of improving the quality of the navigable waters and to develop the criteria required pursuant to subsection (i) of this Act, the Administrator shall establish an initiative through which the Administrator shall fund State and local demonstration programs and research to—

"(A) identify adverse impacts of stormwater discharges on receiving waters;

"(B) identify the pollutants in stormwater which cause impact; and

"(C) test innovative approaches to address the impacts of source controls and model management practices and measures for runoff from municipal storm sewers.

Persons conducting demonstration programs and research funded under this subsection shall also take into account the physical nature of episodic stormwater flows, the varying pollutants in stormwater, the actual risk the flows pose to the designated beneficial uses, and the ability of natural ecosystems to accept temporary stormwater events.

"(2) AWARD OF FUNDS.—The Administrator shall award the demonstration and research program funds taking into account regional and population variations.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $20,000,000 per fiscal year for fiscal years 1996 through 2000. Such sums shall remain available until expended.

"(4) INADEQUATE FUNDING.—For each fiscal year beginning after the date of the enactment of this subsection for which the total amounts appropriated to carry out this subsection are less than the total amounts authorized to be appropriated pursuant to this subsection, any deadlines established under subsection (c)(2)(L) for compliance with water quality standards shall be postponed by 1 year.

"(i) DEVELOPMENT OF STORMWATER CRITERIA.—

"(1) IN GENERAL.—To reflect the episodic character of stormwater which results in significant variances in the volume, hydraulics, hydrology, and pollutant load associated with stormwater discharges, the Administrator shall establish, as an element of the water quality standards established for the designated uses of the navigable waters, stormwater criteria which protect the navigable waters from impairment of the designated beneficial uses caused by stormwater discharges. The criteria shall be technologically and financially feasible and may include performance standards, guidelines, guidance, and model management practices and measures and treatment requirements, as appropriate, and as identified in subsection (h)(1).

"(2) INFORMATION TO BE USED IN DEVELOPMENT.—The stormwater discharge criteria to be established under this subsection—

"(A) shall be developed from—

"(i) the findings and conclusions of the demonstration programs and research conducted under subsection (h);

"(ii) the findings and conclusions of the research and monitoring activities of stormwater dischargers performed in compliance with permit requirements of this Act; and

"(iii) other relevant information, including information submitted to the Administrator under the industrial group permit application process in effect under section 402 of this Act on the day before the date of the enactment of this section;

"(B) shall be developed in consultation with persons with expertise in the management of stormwater (including officials of State and local government, industrial and commercial stormwater dischargers, and public interest groups); and

"(C) shall be established as an element of the water quality standards that are developed and implemented under this Act by not later than December 31, 2008.

"(j) COLLECTION OF INFORMATION.—The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to model management practices and measures and implementation methods, including, but not limited to—

"(1) information concerning the costs and relative efficiencies of model management practices and measures for reducing pollution from stormwater discharges; and

"(2) available data concerning the relationship between water quality and implementation of various management practices to control pollution from stormwater discharges.

"(k) REPORTS OF ADMINISTRATOR.—

"(1) BIENNIAL REPORTS.—Not later than January 1, 1996, and biennially thereafter, the Administrator shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from stormwater discharges and improving the quality of such waters.

"(2) CONTENTS.—Each report submitted under paragraph (1), at a minimum shall—

"(A) describe the management programs being implemented by the States by types of affected navigable waters, categories and subcategories of stormwater discharges, and types of measures being implemented;

"(B) describe the experiences of the States in adhering to schedules and implementing the measures under subsection (c);

"(C) describe the amount and purpose of grants awarded pursuant to subsection (h);

"(D) identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;

"(E) indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this Act;

"(F) include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from stormwater; and

"(G) identify the activities and programs of departments, agencies, and instrumentalities of the United States that are inconsistent with the stormwater management programs implemented by the States under this section and recommended modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.

"(l) GUIDANCE ON MODEL STORMWATER MANAGEMENT PRACTICES AND MEASURES.—

"(1) IN GENERAL.—The Administrator, in consultation with appropriate Federal, State, and local departments and agencies, and after providing notice and opportunity for public comment, shall publish guidance to identify model management practices and measures which may be undertaken, at the discretion of the State or appropriate entity, under a management program established pursuant to this section. In preparing such guidance, the Administrator shall consider integration of a stormwater management program of a State with, and the relationship of such program to, the nonpoint source management program of the State under section 319.

"(2) PUBLICATION.—The Administrator shall publish proposed guidance under this subsection not later than 6 months after the date of the enactment of this subsection and shall publish final guidance under this subsection not later than 18 months after such date of enactment. The Administrator shall periodically review and revise the final guidance upon adequate notice and opportunity for public comment at least once every 3 years after its publication.

"(3) MODEL MANAGEMENT PRACTICES AND MEASURES DEFINED.—For the purposes of this subsection, the term "model management practices and measures" means economically achievable measures for the control of pollutants from stormwater discharges which reflect the most cost-effective degree of pollutant reduction achievable through the application of the best available practices, technologies, processes, siting criteria, operating methods, or other alternatives.

"(m) ENFORCEMENT WITH RESPECT TO STORMWATER DISCHARGERS VIOLATING STATE MANAGEMENT PROGRAMS.—Stormwater dischargers that do not comply with State management program requirements under subsection (c) are subject to applicable enforcement actions under sections 309 and 505 of this Act.

"(n) ENTRY AND INSPECTION.—In order to carry out the objectives of this section, an authorized representative of a State, upon presentation of his or her credentials, shall have a right of entry to, upon, or through any property at which a stormwater discharge or records required to be maintained under the State stormwater management program are located.

"(o) LIMITATION ON DISCHARGES REGULATED UNDER WATERSHED MANAGEMENT PROGRAM.—Stormwater discharges regulated under section 321 in a manner consistent with this section shall not be subject to this section.

"(p) MINERAL EXPLORATION AND MINING SITES.—

"(1) EXPLORATION SITES.—For purposes of subsection (c)(2)(F), stormwater discharges from construction activities shall include stormwater discharges from mineral exploration activities; except that, for exploration at abandoned mined lands, the stormwater program under subsection (c)(2)(F) shall be limited to the control of pollutants added to stormwater by contact with areas disturbed by the exploration activity.

"(2) MINING SITES.—Stormwater discharges at ore mining and dressing sites shall be subject to this section. If any such discharge is commingled with mine drainage or process wastewater from mining operations, such discharge shall be treated as a discharge from a point source for purposes of this Act.

"(3) ABANDONED MINED LANDS.—Stormwater discharges from abandoned mined lands shall be subject to section 319; except that if the State, after notice and an opportunity for comment, finds that regulation of such stormwater discharges under this section is necessary to make reasonable further progress toward achieving water quality standards by the date referred to in subsection (c)(2)(B), such discharges shall be subject to this section.

"(4) SURFACE MINING CONTROL AND RECLAMATION ACT SITES.—Notwithstanding paragraph (3), stormwater discharges from abandoned mined lands site which are subject to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1328) shall be subject to section 319.

"(5) DEFINITIONS.—For purposes of this subsection, the following definitions apply:

"(A) ABANDONED MINED LANDS.—The term 'abandoned mined lands' means lands which were used for mineral activities and abandoned or left in an inadequate reclamation status and for which there is no continuing reclamation responsibility under State or Federal laws.

"(B) PROCESS WASTE WATER.—The term 'process waste water' means any water other than stormwater which comes into contact with any raw material, intermediate product, finished product, byproduct, or waste product as part of any mineral beneficiation processes employed at the site.

"(C) MINE DRAINAGE.—The term 'mine drainage' means any water drained, pumped, or siphoned from underground mine workings or mine pits, but such term shall not include stormwater runoff from tailings dams, dikes, overburden, waste rock piles, haul roads, access roads, and ancillary facility areas.".

(b) REPEAL OF LIMITATION ON PERMIT REQUIREMENT.—Section 402(l) (33 U.S.C. 1342(l)) is repealed.

(c) REPEAL OF MUNICIPAL AND INDUSTRIAL STORMWATER DISCHARGES PROGRAM.—Section 402(p) (33 U.S.C. 1342(p)) is repealed.

(d) DEFINITIONS.—Section 502 (33 U.S.C. 1362) is amended—

(1) by adding at the end of paragraph (14) the following: "The term does not include a stormwater discharge."; and

(2) by adding at the end the following:

"(25) The term 'stormwater' means runoff from rain, snow melt, or any other precipitation-generated surface runoff.

"(26) The term 'stormwater discharge' means a discharge from any conveyance which is used for the collecting and conveying of stormwater to navigable waters and which is associated with a municipal storm sewer system or industrial, commercial, oil, gas, or mining activities or construction activities.".

SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIREMENTS.

Title III (33 U.S.C. 1311–1330) is further amended by adding at the end the following:

"SEC. 323. RISK ASSESSMENT AND DISCLOSURE REQUIREMENTS.

"(a) GENERAL RULE.—The Administrator or the Secretary of the Army (hereinafter in this section referred to as the 'Secretary'), as appropriate, shall develop and publish a risk assessment before issuing—

"(1) any standard, effluent limitation, water quality criterion, water quality based requirement, or other regulatory requirement under this Act (other than a permit or a purely procedural requirement); or

"(2) any guidance under this Act which, if issued as a regulatory requirement, would result in an annual increase in cost of $25,000,000 or more.

"(b) CONTENTS OF RISK ASSESSMENTS.—A risk assessment developed under subsection (a), at a minimum, shall—

"(1) identify and use all relevant and readily obtainable data and information of sufficient quality, including data and information submitted to the Agency in a timely fashion;

"(2) identify and discuss significant assumptions, inferences, or models used in the risk assessment;

"(3) measure the sensitivity of the results to the significant assumptions, inferences, or models that the risk assessment relies upon;

"(4) with respect to significant assumptions, inferences, or models that the results are sensitive to, identify and discuss—

"(A) credible alternatives and the basis for the rejection of such alternatives;

"(B) the scientific or policy basis for the selection of such assumptions, inferences, or models; and

"(C) the extent to which any such assumptions, inferences, or models have been validated or conflict with empirical data;

"(5) to the maximum extent practical, provide a description of the risk, including, at minimum, best estimates or other unbiased representation of the most plausible level of risk and a description of the specific populations or natural resources subject to the assessment;

"(6) to the maximum extent practical, provide a quantitative estimate of the uncertainty inherent in the risk assessment; and

"(7) compare the nature and extent of the risk identified in the risk assessment to other risks to human health and the environment.

"(c) RISK ASSESSMENT GUIDANCE.—Not later than 180 days after the date of the enactment of this section, and after providing notice and opportunity for public comment, the Administrator, in consultation with the Secretary, shall issue, and thereafter revise, as appropriate, guidance for conducting risk assessments under subsection (a).

"(d) MARGIN OF SAFETY.—When establishing a margin of safety for use in developing a regulatory requirement described in subsection (a)(1) or guidance described in subsection (a)(2), the Administrator or the Secretary, as appropriate, shall provide, as part of the risk assessment under subsection (a), an explicit and, to the extent practical, quantitative description of the margin of safety relative to an unbiased estimate of the risk being addressed.

"(e) DISCRETIONARY EXEMPTIONS.—The Administrator or the Secretary, as appropriate, may exempt from the requirements of this section any risk assessment prepared in support of a regulatory requirement described in subsection (a)(1) which is likely to result in annual increase in cost of less than $25,000,000. Such exemptions may be made for specific risk assessments or classes of risk assessments.

"(f) GENERAL RULE ON APPLICABILITY.—The requirements of this section shall apply to any regulatory requirement described in subsection (a)(1) or guidance described in subsection (a)(2) that is issued after the last day of the 1-year period beginning on the date of the enactment of this section.

"(g) SIGNIFICANT REGULATORY ACTIONS AND GUIDANCE.—

"(1) APPLICABILITY OF REQUIREMENTS.—In addition to the regulatory requirements and guidance referred to in subsection (f), the requirements of this section shall apply to—

"(A) any standard, effluent limitation, water quality criterion, water quality based requirement, or other regulatory requirement issued under this Act during the period described in paragraph (2) which is likely to result in an annual increase in cost of $100,000,000 or more; and

"(B) any guidance issued under this Act during the period described in paragraph (2) which, if issued as a regulatory requirement, would be likely to result in annual increase in cost of $100,000,000 or more.

"(2) COVERED PERIOD.—The period described in this paragraph is the period beginning on February 15, 1995, and ending on the last day of the 1-year period beginning on the date of the enactment of this Act.

"(3) REVIEW.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) which was issued before the date of the enactment of this section shall be reviewed and, with respect to each such requirement or guidance, the Administrator or the Secretary, as appropriate, shall based on such review—

"(A) certify that the requirement or guidance meets the requirements of this section without revision; or

"(B) reissue the requirement or guidance, after providing notice and opportunity for public comment, with such revisions as may be necessary for compliance with the requirements of this section.

"(4) DEADLINE.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) for which the Administrator or the Secretary, as appropriate, does not issue a certification or revisions under paragraph (3) on or before the last day of the 18-month period beginning on the date of the enactment of this section shall cease to be effective after such last day until the date on which such certification or revisions are issued.".

SEC. 324. BENEFIT AND COST CRITERION.

Title III (33 U.S.C. 1311–1330) is further amended by adding at the end the following:

"SEC. 324. BENEFIT AND COST CRITERION.

"(a) DECISION CRITERION.—

"(1) CERTIFICATION.—The Administrator or the Secretary of the Army (hereinafter in this section referred to as the 'Secretary'), as appropriate, shall not issue—

"(A) any standard, effluent limitation, or other regulatory requirement under this Act; or

"(B) any guidance under this Act which, if issued as a regulatory requirement, would result in an annual increase in cost of $25,000,000 or more,

unless the Administrator or the Secretary certifies that the requirement or guidance maximizes net benefits to society. Such certification shall be based on an analysis meeting the requirements of subsection (b).

"(2) EFFECT OF CRITERION.—Notwithstanding any other provision of this Act, the decision criterion of paragraph (1) shall supplement and, to the extent there is a conflict, supersede the decision criteria otherwise applicable under this Act; except that the resulting regulatory requirement or guidance shall be economically achievable.

"(3) SUBSTANTIAL EVIDENCE.—Notwithstanding any other provision of this Act, no regulation or guidance subject to this subsection shall be issued by the Administrator or the Secretary unless the requirement of paragraph (1) is met and the certification is supported by substantial evidence.

"(b) BENEFIT AND COST ANALYSIS GUIDANCE.—

"(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this section, and after providing notice and opportunity for public comment, the Administrator, in concurrence with the Administrator of the Office of Information and Regulatory Affairs, shall issue, and thereafter revise, as appropriate, guidance for conducting benefit and cost analyses in support of making certifications required by subsection (a).

"(2) CONTENTS.—Guidance issued under paragraph (1), at a minimum, shall—

"(A) require the identification of available policy alternatives, including the alternative of not regulating and any alternatives proposed during periods for public comment;

"(B) provide methods for estimating the incremental benefits and costs associated with plausible alternatives, including the use of quantitative and qualitative measures;

"(C) require an estimate of the nature and extent of the incremental risk avoided by the standard, effluent limitation, or other regulatory requirement, including a statement that places in context the nature and magnitude of the estimated risk reduction; and

"(D) require an estimate of the total social, environmental, and economic costs of implementing the standard, effluent limitation, or other regulatory requirement.

"(c) EXEMPTIONS.—The following shall not be subject to the requirements of this section:

"(1) The issuance of a permit.

"(2) The implementation of any purely procedural requirement.

"(3) Water quality criteria established under section 304.

"(4) Water quality based standards established under section 303.

"(d) DISCRETIONARY EXEMPTIONS.—The Administrator or the Secretary, as appropriate, may exempt from this section any regulatory requirement that is likely to result in an annual increase in costs of less than $25,000,000. Such exemptions may be made for specific regulatory requirements or classes of regulatory requirements.

"(e) GENERAL RULE ON APPLICABILITY.—The requirements of this section shall apply to any regulatory requirement described in subsection (a)(1)(A) or guidance described in subsection (a)(1)(B) that is issued after the last day of the 1-year period beginning on the date of the enactment of this section.

"(f) SIGNIFICANT REGULATORY ACTIONS AND GUIDANCE.—

"(1) APPLICABILITY OF REQUIREMENTS.—In addition to the regulatory requirements and guidance referred to in subsection (e), this section shall apply to—

"(A) any standard, effluent limitation, or other regulatory requirement issued under this Act during the period described in paragraph (2) which is likely to result in an annual increase in cost of $100,000,000 or more; and

"(B) any guidance issued under this Act during the period described in paragraph (2) which, if issued as a regulatory requirement, would be likely to result in annual increase in cost of $100,000,000 or more.

"(2) COVERED PERIOD.—The period described in this paragraph is the period beginning on February 15, 1995, and ending on the last day of the 1-year period beginning on the date of the enactment of this Act.

"(3) REVIEW.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) which was issued before the date of the enactment of this section shall be reviewed and, with respect to each such requirement or guidance, the Administrator or the Secretary, as appropriate, shall based on such review—

"(A) certify that the requirement or guidance meets the requirements of this section without revision; or

"(B) reissue the requirement or guidance, after providing notice and opportunity for public comment, with such revisions as may be necessary for compliance with the requirements of this section.

"(4) DEADLINE.—Any regulatory requirement described in paragraph (1)(A) or guidance described in paragraph (1)(B) for which the Administrator or the Secretary, as appropriate, does not issue a certification or revisions under paragraph (3) on or before the last day of the 18-month period beginning on the date of the enactment of this section shall cease to be effective after such last day until the date on which such certification or revisions are issued.

"(g) STUDY.—Not later than 5 years after the date of the enactment of this section, the Administrator, in consultation with the Administrator of the Office of Information and Regulatory Affairs, shall publish an analysis regarding the precision and accuracy of benefit and cost estimates prepared under this section. Such study, at a minimum, shall—

"(1) compare estimates of the benefits and costs prepared under this section to actual costs and benefits achieved after implementation of regulations or other requirements;

"(2) examine and assess alternative analytic methods for conducting benefit and cost analysis, including health-health analysis; and

"(3) make recommendations for the improvement of benefit and cost analyses conducted under this section.".

AMENDMENT OFFERED BY MR. MINETA

Mr. MINETA. Mr. Chairman, I offer an amendment.

PARLIAMENTARY INQUIRY

Mr. SHUSTER. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. SHUSTER. Is this title I or III?

Mr. CHAIRMAN. We are on title III.

Mr. SHUSTER. Title III?

The CHAIRMAN. Title III, and the gentleman from California has been recognized for an amendment to title III.

Mr. SHUSTER. Mr. Chairman, we cannot find a copy of the gentleman's amendment.

Mr. MINETA. Mr. Chairman, this has been printed in the RECORD. We will be more than happy to present one.

Mr. SHUSTER. Mr. Chairman, I thank the gentleman.

Mr. MINETA. I had understood that the committee had copies of the amendments.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. MINETA:

Page 32, strike line 19 and all that follows through line 6 on page 33.

Page 33, line 7, strike "(c)" and insert "(b)".

Page 33, strike line 16 and all that follows through line 10 on page 34.

Pages 34 through 47, strike section 302 of the bill.

Redesignate subsequent sections of title III of the bill accordingly. Conform the table of contents of the bill accordingly.

Page 47, strike line 20 and all that follows through line 8 on page 48 and insert the following:

SEC. 303. REVISION OF STATE WATER QUALITY STANDARDS.

Section 303(c)(1) is amended by striking

Conform the table of contents of the bill accordingly.

Page 48, strike line 16 and all that follows through line 10 on page 52.

Page 64, strike lines 4 through 14.

Pages 73 through 80, strike sections 311 and 312 of the bill.

Redesignate subsequent sections of title III of the bill accordingly. Conform the table of contents of the bill accordingly.

Pages 93 through 95, strike section 318 of the bill.

Redesignate subsequent sections of title III of the bill accordingly. Conform the table of contents of the bill accordingly.

Page 130, line 2, after the period insert closing quotation marks and a period.

Page 130, strike lines 3 through 25.

Page 131, strike lines 5 through 22 and insert the following:

"(r) SYNCHRONIZED PERMIT TERMS.—Notwith-* * *

Mr. MINETA. Mr. Chairman, my amendment is an effort to salvage the heart of the Clean Water Act. It would do so by striking the provisions in title III that roll back standards for industrial dischargers.

We have all heard repeatedly that the Clean Water Act is the most successful Federal environmental law. The widely acknowledged successes of the Act are attributable to its control of pollutant discharges from so-called point sources. Point sources are industry and sewage treatment works discharging their polluted wastewater into our Nation's lakes, rivers and streams, and the ocean.

Ironically, it is precisely the part of the act that is responsible for its success that H.R. 961 would dismantle. In the name of increased flexibility, loophole by loophole the bill would eliminate fundamental protections of the Act that have resulted in the significant gains we have seen over the past 20 years.

Ideally, any amendments to the Clean Water Act would improve water quality, since 40 percent of our Nation's waters still do not meet state-designated water quality standards. Under that standard, these waivers clearly should be stricken.

However, even under a far lower standard for judging whether the bill's industrial waiver provisions should be stricken, the waivers must go. That lower standard is simple: will the waiver provision increase pollution and degrade water quality below today's level? If so, it should be stricken. That is what my amendment would do.

If a waiver provision will allow us to hold on to the progress that our municipalities, industries and citizens have worked so hard to achieve, then it might be acceptable. Unfortunately, when measured against this minimal standard, the bill's industrial waiver provisions fail miserably.

Here are a few of the many examples of the illogical, and environmentally and financially destructive, consequences of the bill's many industrial waivers:

A factory could obtain a permit that allows it to significantly increase the toxic pollutants it discharges into a river nearby a residential area, if the owner of a factory 100 miles away agrees to reduce its emissions into the air.

An industry that discharges its polluted wasterwater into a municipal sewage treatment plant could reduce the level of treatment prior to discharge, even if the municipal treatment plant regularly has combined sewer overflows that cause untreated waste, including industrial waste, to flow into resident's basements, the streets and waterbodies.

Dischargers of nearly 70,000 chemicals could flood EPA with requests for waivers from the current baseline standard for certain toxic and nonconventional pollutants. These include most of the pollutants referred to as dioxins.

It has been argued that the waivers will not cause a setback in water quality because waivers are not available unless authorized by a State or EPA. This supposed safeguard is in most instances an illusion.

In some instances the waiver is automatic, without State or EPA approval. In others, the bill requires EPA or a State to grant a waiver if certain conditions are met, and those conditions frequently do not focus upon water quality. The bill essentially creates entitlements to waivers, and then if the State or Federal agencies deny the waivers, the polluter can challenge the denial in court, further straining limited State and Federal resources, and making this program more like Superfund.

The bill's industrial waivers create new standards that are vague, unclear, and, in come instances, patently impossible to implement. These waivers would dramatically increase burdens on States responsible for implementing them, cause delays in permitting, and increase the amount and complexity of litigation.

The waivers would cause uncertainty for industry, by eliminating the bill's uniform standards and introducing in their place multiple ambiguous waivers. They would create competition between communities for industry and jobs, resulting in reduced standards for water. They would create an unlevel playing field, where the preferences given certain industrial dischargers will result in competitive disadvantages to those who did not obtain waivers. And, the waivers will especially harm those who live downstream, as most of us do, from industrial dischargers that may receive waivers from the Clean Water Act's treatment requirements.

My amendment would not increase regulatory requirements or financial burdens. It would simply mean that industry could not do less than it is already doing. My amendment is about holding on to the benefits of one of the Congress' and this Great Nation's true success stories. It is about not losing the achievements of the past 20 years. And, it is about improving the quality of the water that our children and our childrens' children will inherit. A vote for increasing industrial water pollution through waivers would be unconscionable. I urge you to support my amendment.

□ 1600

Mr. SHUSTER. Mr. Chairman, I rise in strong opposition to the amendment.

Mr. Chairman, this amendment is simply a grab bag of deletions of both the reform and flexibility provisions in

the bill. It deletes the provisions of flexibility on the nonconventional pollution. It guts the pollution provision opportunities. It deletes the pretreatment flexibility. And, perhaps most importantly, it fundamentally mischaracterizes the waiver provisions in this bill.

My good friend from California says that these waivers should be eliminated because they give industry and others the opportunity to in effect get entitlements to waivers. That simply is not the case. No waiver can be granted unless the States water authority officials and the EPA approve the waiver.

Now, are the State water quality officials going to approve a waiver that harms the environment? Is the EPA going to approve a waiver that harms the environment?

Of course not. These waivers, when requested, must meet water quality standards, and they must get the written approval of the water quality officials in the States or the EPA.

So this simply is an attempt to gut the legislation we have before us. The very groups, and I will not take a lot of the committee's time to go through this in detail. We covered this in the previous debate. The very same groups from the National Governors' Association on down, who opposed the previous amendment, oppose this legislation.

So I would urge my colleagues to vote this down so we can get on with the consideration of this bill.

Mr. BORSKI. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I rise to express my strong support for the amendment offered by the gentleman from California [Mr. MINETA], the distinguished ranking member of the Committee on Transportation and Infrastructure. This amendment would strike the many loopholes and waivers that are sprinkled throughout the title of this bill. This title replaces the strong national standards that have made the Clean Water Act a success with national loopholes. The gentleman from California has found nine specific provisions that roll back the Clean Water Act.

Does anybody really know the impact of these changes? Has anyone examined their long-range implications?

The Environmental Protection Agency called the waivers and exemptions in the bill a wholesale repeal and replacement of the fundamental provisions in the Clean Water Act. Strong and predictable national standards have been at the heart of the success of the Clean Water Act during the past 2 decades. These standards should not be chopped up by this combination of waivers and loopholes that some secret industry task force had on its wish list.

The Clean Water Act has meant improved water quality across the Nation for every citizen in this country. For 20 years, we have been working to make our bath waters cleaner, and in many cases there has been much success. I urge my colleagues not to turn their back on the success of the past 20 years.

A vote for this amendment is a vote to maintain the strong Clean Water Act that we currently have. I urge Members to vote for the Mineta amendment and vote against a weakening of the Clean Water Act.

Ms. FURSE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in strong support of this amendment. H.R. 961, as drafted, represents a frontal attack on one of our country's most successful environmental laws. We have spent two decades diligently cleaning up our Nation's streams and rivers and lakes, and it is inconceivable to me that anyone would now advocate back pedaling on the great progress we have made.

In the Portland metropolitan area, which I represent, clean water consistently ranks as the top environmental concern of area residents. So important is clean water to Oregonians that they have agreed to spend more than $750 million to prevent Portland's combined sewer overflow from dumping raw sewage into nearby waterways.

Oregonians remember very well the days when the Willamette River which flows through Portland was one of the most polluted rivers in the country. The waters of the Willamette were so choked with pollution that when live fish were put in a basket and lowered into the river to check water quality, it took only a minute and a half for the fish to die.

Obviously, at the same time it was unsafe for people to swim in the river, along with the fish. Now, this river, Mr. Chairman, was a disgrace. But thanks to the Clean Water Act, the Willamette River is now safe to swim in and salmon once again are present in increasing numbers.

Oregonians do not want to go back to the days of polluted waters, and neither do the American people. Americans do not want to see raw sewage floating in the surf when they visit the beaches. Americans do not want to worry about their children getting sick from swimming in a neighborhood stream. Americans do not want to think that the fish they catch in their favorite fishing hole might be too toxic to eat. And Americans do not want to turn back the clock to polluted rivers that actually caught fire. When they would go to the sink to get a drink of water, Americans do not want to choke on what comes out of the tap.

What American people do want is a strong Clean Water Act, and I urge my colleagues to vote "yes" on the Mineta amendment.

Mr. TAUZIN. Mr. Chairman, I rise in strong objection to the Mineta amendment. The pollution prevention provisions of H.R. 961 are not a loophole. Instead, this bill would allow a facility to engage in multimedia offsets within a facility, or to trade between facilities, if it could demonstrate to EPA or the State that the result would produce an overall net benefit to the environment.

A chemical plant in my district, Union Carbide, identified a multimedia pollution prevention project as an alternative to a rigid Clean Water Act technology-based numerical effluent limitation for certain non-toxic pollutants. Instead of a costly expansion of end-of-pipe treatment that would just shift waste from the water to a landfill, this innovative solution would have recovered 40 thousand pounds of product each day, reduced land disposal of sludge by 3,000 pounds a day, cut air emissions and saved energy. The only problem is that while pilot studies showed that the rigid Clean Water Act numerical limit could be met under most weather conditions, it could not guarantee that it would meet the standard 100 percent of the time. Pilot studies show that temperatures below 50 degrees F during the months of January and February would decrease the treatment efficiency. A conservative estimate, based on the unlikely prospect of 2 months of Southern Louisiana temperatures below 50 degrees, would still result in the treatment system meeting the standard a minimum of 84 percent of the time. Variance from the standard would be between 15 and 25 parts per million (ppm) for total suspended solids. The variance could be made up by executing a trading agreement with another source under section 302(c) of H.R. 961. A few cold days in Louisiana might cause the limit to be exceeded by an environmentally insignificant amount.

The plant could not take the risk of going forward with the project without the certainty of meeting the standard. Ironically, it would have cost more in initial capital expense than conventional end-of-pipe treatment, but the company was willing to do it because it made more environmental sense, and would have paid for itself over time. The plant was also willing to pay a farmer up-river to reduce his non-point discharge of TSS into the river. A greater reduction could have been achieved more cheaply. But because there was no flexibility available in the foreseeable future, this innovative solution has been shelved. Everybody loses. Especially the environment!

This bill, unlike the current law, will promote and reward innovation rather than stifle it. It's about time we started writing laws that unleashed creativity rather than shackled our industry to an outdated system of one size fits all regulations.

Mr. POSHARD. Mr. Chairman, I rise in opposition to the amendment offered by my good friend, Mr. MINETA.

In particular, I rise in opposition to that part of his amendment which deletes the remaining provisions of the bill, which we adopted in committee without opposition.

In 1987, all over the coal mining States of this country, we had sites that had previously been mined. They were sitting there with recoverable coal left at the site needing to be remined. The coal could be extracted and the area brought up to the standards of mine reclamation laws in this country.

The problem was that the coal industry would not go in and remine those previously

mined lands because operators did not feel certain that preexisting discharges of poor water quality could be totally eliminated. And they were unwilling to be held liable for a pollutional discharge already existing on the site.

So this Congress said in 1987, OK, we know these sites exist. We know they need to be reclaimed. And if the Government has to pay for the reclamation it will be expensive to the taxpayers.

So in order to make it economically feasible for the coal companies to go in, remine what remaining coal they could get from the site and reclaim the land by bringing it up to present reclamation standards, the Congress in the 1987 Clean Water Act provided that a reminer only had to insure that his or her operation did not cause discharges to be worse than what was found at the site, and in fact, under the provisions of the 1987 act, every effort is to be made to improve the quality of the discharged water.

So the effect of this 1987 provision in the Clean Water Act is that we got not only the remaining coal on previously remined sites, we reclaimed previously mined sites that would not have been reclaimed, and in most cases improved the water quality discharges from those sites. But in no instance did we make the water quality discharge worse than it had previously been before the remining took place.

So what's the problem? The problem is that certain remining operations initiated prior to the 1987 amendments were not afforded this relief. While these pre-1987 operations may, in fact, meet the criteria set forth in the 1987 amendments, they are not in compliance with the Clean Water Act simply because they were initiated prior to the amendments. This bill simply provides this class of remining operations be accorded the same treatment as those initiated after the 1987 act.

The remaining provisions of this bill are just and appropriate and should be adopted and this amendment should be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California [Mr. MINETA].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. MINETA. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 166, noes 260, not voting 8, as follows:

[Roll No. 313]

AYES—166

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bonior
Borski
Boucher
Brown (FL)
Brown (OH)
Bryant (TX)
Cardin
Clay
Clayton
Clyburn
Coleman
Collins (MI)
Condit
Conyers
Coyne
DeFazio
DeLauro
Dellums
Deutsch
Dicks
Dingell
Dixon
Doggett
Durbin
Engel
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Flake
Foglietta
Forbes
Ford
Fox
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gonzalez
Green
Hall (OH)
Harman
Hastings (FL)
Hefner
Hinchey
Holden
Hoyer
Jackson-Lee
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Lantos
Levin
Lewis (GA)
Lincoln
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Matsui
McCarthy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Mineta
Minge
Mink
Moran
Morella
Nadler
Neal
Oberstar
Obey
Olver
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Peterson (MN)
Pomeroy
Rahall
Rangel
Reed
Reynolds
Richardson
Rivers
Ros-Lehtinen
Rose
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Schroeder
Schumer
Scott
Serrano
Shays
Sisisky
Skaggs
Slaughter
Smith (NJ)
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Tucker
Velazquez
Vento
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Woolsey
Wyden
Wynn
Yates

NOES—260

Allard
Archer
Armey
Bachus
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Brewster
Browder
Brown (CA)
Brownback
Bryant (TN)
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Calvert
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Chenoweth
Christensen
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Collins (GA)
Combest
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de la Garza
Deal
DeLay
Diaz-Balart
Dickey
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Fowler
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gilman
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
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Hastings (WA)
Hayes
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Hefley
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
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Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kasich
Kelly
Kim
King
Kingston
Klug
Knollenberg
Kolbe
LaFalce
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lightfoot
Linder
Lipinski
Livingston
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Longley
Lucas
Manzullo
Martini
Mascara
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Molinari
Mollohan
Montgomery
Moorhead
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Orton
Oxley
Packard
Parker
Paxon
Payne (VA)
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Pickett
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Porter
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Poshard
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Rohrabacher
Roth
Royce
Salmon
Sanford
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shuster
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Traficant
Upton
Visclosky
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
White
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Baker (CA)
Bunning
Collins (IL)
Fattah
Lewis (KY)
Moakley
Peterson (FL)
Rogers

□ 2030

The Clerk announced the following pair:

On this vote:

Mr. Moakley for, with Mr. Lewis of Kentucky against.

Mr. HOLDEN changed his vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

The CHAIRMAN. Are there further amendments to title III?

Mr. BOEHLERT. Mr. Chairman, I would defer to our colleague, the gentleman from Alabama [Mr. BACHUS], because I understand he has a noncontroversial amendment that will be accepted by both sides.

The CHAIRMAN. For what purpose does the gentleman from Alabama, [Mr. BACHUS] rise?

AMENDMENT OFFERED BY MR. BACHUS

Mr. BACHUS of Alabama. Mr. Chairman, I offer a noncontroversial amendment. This is a revised version of amendment 1, as originally printed in the CONGRESSIONAL RECORD.

The Clerk read as follows:

Amendment offered by Mr. BACHUS: Page 146, line 17, strike "The" and insert "Working in conjunction with the Administrator of the Small Business Administration and the Small Business Ombudsman of the Environmental Protection Agency, the".

Mr. BACHUS of Alabama. Mr. Chairman, I did allow that amendment to be read because it was short, and it basically speaks for itself. The bill refers to small businesses, without any definition that allows the administrator of the EPA total discretion in defining small business. What we have simply

done, at the request of small business advocates, including the NFIB, is simply ask that the administrator of the Small Business Administration and the small business advocate at the EPA have input in defining small businesses.

Mr. Chairman, this amendment will further clarify the provisions of the bill which are intended to reduce the paperwork and regulatory burden placed upon small businesses.

In order to reduce the regulatory burden that strangles small businesses in our Nation, the committee bill purports to exempt small businesses from general and site-specific stormwater discharge permits.

While the reformed permit process contained in the committee bill is a tremendously positive step in the right direction, the bill leaves it to the total discretion of the EPA to promulgate a definition of whether or not a business qualifies as a "small business." Many members, myself included, fear that EPA will attempt to circumvent the clear intent of the bill and define "small business" so narrowly that it will, as a practical matter, exempt few of the Nation's small businesses.

My amendment requires that the EPA work with the Small Business Administration and the EPA's Small Business Ombudsman in defining "small business." We think, and the NFIB and other small business advocacy groups agree, that with SBA and the Small Business Ombudsman's input, it will help ensure that in drafting its definition of "small business" the EPA will not frustrate the intent of the bill.

While my amendment will continue to give discretion to the EPA in coming to a proper definition of "small business," in my personal view any EPA definition of "small business" which does not include as small businesses, at the minimum, all businesses with 100 or fewer employees, would frustrate the intent of the bill. Including all such businesses as small businesses would be consistent with section 507 of the Clean Air Act that defines "small businesses" as any business with 100 or fewer employees.

In closing, let me stress that this amendment does not affect those provisions in the bill that empower a State to find that stormwater discharges from any entity would have a significant adverse effect on water quality. In any such case, a permit would be required regardless of whether the entity was a small business or not.

Thus, it should be made very clear that any small business can be made subject to the permit requirement if a State finds that the entity is conducting an activity that has a truly significant adverse effect on water quality. What my amendment does is help protect the goal of the committee to reduce cost and paperwork that burdens literally thousands of small businesses that do not pose a threat to our Nation's water quality.

Mr. SHUSTER. Mr. Chairman, will the gentleman yield?

Mr. BACHUS of Alabama. I yield to the gentleman from Pennsylvania.

Mr. SHUSTER. We have examined this amendment and we support it, Mr. Chairman.

Mr. MINETA. Mr. Chairman, would the gentleman from Alabama yield?

Mr. BACHUS of Alabama. I yield to the gentleman from California.

Mr. MINETA. Mr. Chairman, this side has looked at the amendment. We have no objections to it at all.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alabama [Mr. BACHUS].

The amendment was agreed to.

AMENDMENT OFFERED BY MR. BOEHLERT

Mr. BOEHLERT. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. BOEHLERT:

Page 115, strike line 5 and all that follows through line 3 on page 117 and insert the following:

(n) COASTAL ZONE MANAGEMENT.—Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1451 note) is amended—

(1) in subsection (a)(1)—

(A) by inserting "(A)" after "PROGRAM DEVELOPMENT.—"; and

(B) by adding at the end the following:

"(B) A State that has not received Federal approval for the State's core coastal management program pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) shall have 30 months from the date of approval of such program to submit a Coastal Nonpoint Pollution Program pursuant to this section. Any such State shall also be eligible for any extension of time for submittal of the State's nonpoint program that may be received by a State with a federally approved coastal management program.";

(2) in subsection (b), in the matter preceding paragraph (1), by striking "to protect coastal waters generally" and inserting "to restore and protect coastal waters where the State has determined that coastal waters are threatened or significantly degraded";

(3) in subsection (b)(3)—

(A) by striking "The implementation" and inserting "A schedule for the implementation"; and

(B) by inserting ", and no less often than once every 5 years," after "from time to time";

(4) in subsection (b) by adding at the end the following:

"(7) IDENTIFICATION OF PRIORITY AREAS.—A prioritization of the areas in the State in which management measures will be implemented.";

(5) in subsection (c) by adding at the end the following:

"(5) CONDITIONAL APPROVAL.—The Secretary and Administrator may grant conditional approval to a State's program where the State requests additional time to complete the development of its program. During the period during which the State's program is subject to conditional approval, the penalty provisions of paragraphs (3) and (4) shall not apply.";

(6) in subsection (h)(1) by striking ", 1993, and 1994" and inserting "through 2000"; and

(7) in subsection (h)(2)(B)(iv) by striking "fiscal year 1995" and inserting "each of fiscal years 1995 through 2000".

Mr. BOEHLERT. Mr. Chairman, I think the last vote, the last recorded vote, indicates that there is strong sentiment for making some adjustments to H.R. 961, as reported from the Committee on Transportation and Infrastructure. As a matter of fact, we had a 184 vote, indicating that people want some adjustment.

I have been told that if we break down the overall package and bring some of the most important component parts before this body, we will have a better chance of achieving our objective. Therefore, we are doing just that. This amendment I am offering deals with the Coastal Zone Management Program. As we all know, the committee's bill repeals that very important program. The program cries out for reform, not repeal.

Nonpoint source pollution impairs more water bodies nationwide than any other pollution source. Nearly half of all estuarine waters are impaired or threatened, mostly from nonpoint sources. Pollution has limited the harvest of over one-third of all shellfish beds in the United States, and more than 10,000 beaches, 10,000 beaches, were closed to the public over the past 5 years, and 46 out of 50 States have banned or issued health advisories on fish consumption, because of contamination from dangerous toxins.

Clearly, this is a public health-public safety issue, as well as an environmental issue. The health costs pose even greater threats to the public welfare, not to mention the declining fisheries, the lost income, jobs for the tourism industry.

Section 6217 of the Coastal Zone Act reauthorization amendments is the only enforceable program developed by Congress to prevent nonpoint source pollution. It was adopted in 1990 expressly to address polluted runoff in coastal areas by creating a State-Federal partnership to develop and implement coastal nonpoint source pollution control programs.

Mr. Chairman, we look, and we have reached out to others beyond this institution, beyond this Nation's Capitol, for input. We have gone to those most directly affected by that. In this instance, we have been dealing with the Coastal States Organization, representing 30 coastal States, all up and down the east and west coasts of the United States and along the Gulf of Mexico.

The Coastal States Organization has endorsed the coastal zone provisions that I am referring to in this amendment as a substitute to the Clean Water Act reauthorization as it remains silent on that issue. Actually, it is more than silent. It repeals it.

Let me read from the letter of the Coastal States Organization; once again, 30 States, 30 Governors, Republicans and Democrats alike, people who day in and day out have to live with this issue. The letter says:

We are encouraged to hear you will offer an alternative package to the Clean Water Act reauthorization that would amend, rather than repeal, the coastal nonpoint pollution control program. . . . Runoff pollution

causes significant economic harm. Commercial and recreational fisheries are being closed. Beaches are being closed to the public. Nonpoint pollution poses serious human health and safety concerns, while at the same time degrades wildlife habitat. This problem needs to be addressed now, before this country suffers further economic losses, health hazards, and environmental degradation. . . .

We "strongly support," says the Coastal States Organization, representing 30 States, 30 Governors, "We strongly support your efforts to amend, not repeal, the nonpoint pollution coastal program established under section 6217 of" the act.

Therefore, Mr. Chairman, I urge my colleagues to give this the very careful consideration it deserves. I know this has been a long day. It has been a good day, however, because the House has proven that we are spirited in debate, that competing ideas are considered, pro and con, and finally we will render a judgment in the people's behalf. I urge support of my amendment.

Mr. SHUSTER. Mr. Chairman, I rise in opposition to this amendment.

Mr. Chairman, this amendment simply was already included in the substitute, which was very resoundingly defeated two votes ago. I am sure my good friend, the gentleman from New York, would not knowingly intentionally mislead the House. The letter the gentleman quoted from was not from the Governors. In fact, the National Governors Association opposes this provision. The letter he quoted from was from the Coastal Zone Management Association, which is made up of the bureaucrats who run it, and of course that is quite a difference. Beyond that, the Water Quality Association also opposes this amendment.

Mr. Chairman, to say that we eliminate coastal zone management simply is not true. Our bill does not gut those protections. What our bill does is fold the coastal zone management provision into the section 319 program, so we bring together the two programs, so we have more flexibility, and what we do is eliminate this one-size-fits-all provision, which is in the law and which would be followed if my friend's amendment is adopted.

If his amendment is adopted, we would simply continue with the States being forced to adopt the same exact program for agriculture, ranching, forestry, marinas, and urban areas. It lacks flexibility. It imposes restrictive Federal mandates on States. It gives EPA the power to determine appropriate land use practices, and requires the States to adopt enforceable land use requirements, which would have to be approved by EPA.

States must identify, under the provisions in our bill, States must identify critical coastal areas. The States may focus resources on priority coastal waters, but have the flexibility to target areas of concern. Unlike CZARA, the bill does not allow the Federal Government to mandate where a State coastal zones boundary should be.

If the State already has developed its coastal zone management program, it may implement that program, but H.R. 961, the bill, does not mandate that States develop two separate programs, one for the State generally, and one for the coastal areas. Instead, it eliminates this duplicative regulation. In fact, even though it is late in the evening, with some difficulty, I can lift this 800-and-some-page tome, which now represents all the regulations that the States must follow under EPA guidance. This is the kind of thing we are trying to eliminate.

Mr. Chairman, we do not eliminate coastal zone management, we streamline it, fold it in, and tell the States they have flexibility to achieve what is best for them. I urge defeat of this amendment.

Mr. BOEHLERT. Mr. Chairman, will my colleague yield?

Mr. SHUSTER. I am happy to yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the reason it is very difficult to lift that very heavy document is because that is not a document that contains regulations, it contains options for the States.

Mr. SHUSTER. I would take back my time, Mr. Chairman, and point out that the gentleman is so right, this was supposed to be guidelines. However, the EPA is using this and interpreting it as a basis for forcing the States to comply. It is one more example of something that is supposed to be an EPA guideline, but ends up really having the force of an unfunded mandate, and that is another reason why we should defeat this amendment.

□ 2045

Mr. BOEHLERT. If my distinguished chairman would yield one more time, I would point out my amendment fixes the problem you are referring to. That is exactly why the amendment deserves to be supported.

Mr. SHUSTER. I thank my friend. That is not the way we interpret it, it is not the way the national Governors interpret it, and it is not the way the State Water Quality Association interprets it.

Mr. SAXTON. Mr. Chairman, will the gentleman yield?

Mr. SHUSTER. I yield to the gentleman from New Jersey.

Mr. SAXTON. Mr. Chairman, I would just like to point out, I know there is some confusion over all the letters we have had floating around here today, but the letter that the gentleman from New York refers to that does endorse this provision, the provision that is the subject of this amendment, is a letter from the Coastal States Organization which was an organization founded in 1970 to represent the Governors of the 35 coastal States, Territories and Commonwealths on coastal, Great Lakes, and ocean affairs.

Mr. SHUSTER. I would take back my time and say the gentleman is absolutely right. It is an organization. These are the bureaucrats from the various States, and the National Governors Association opposes this amendment.

Mr. MINETA. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. STUDDS].

Mr. STUDDS. Mr. Chairman, I thank the gentleman for yielding me the time. I had an identical amendment drafted myself. I commend the gentleman from New York and his leadership on this and all other matters today.

Mr. Chairman, I rise in support of the gentleman's amendment. H.R. 961 will undo much of the progress we have made in cleaning up our rivers, lakes, and oceans over the last 25 years. The supporters of this bill dismiss such concerns as hysterical. But all you have to do is read the bill. H.R. 961 throws out the baby and makes the taxpayer drink the bathwater. It weakens protection of the aquatic environment on nearly every major front. The amendment offered by the gentleman from New York would restore some protection on just one of those fronts—nonpoint pollution of our coastal waters.

Those of us that represent coastal areas—and there are many of us in this body, know that a clean marine environment is vital to the local economy and quality of life. This is important considering that more than half of all Americans now live in coastal counties, and this proportion is expected to increase in the future. Americans who do not live on the coast also benefit from a clean coastal environment, either in the form of abundant, healthy seafood or from recreational opportunities at the seashore. Fisheries and tourism can only thrive along our coasts if the water is clean. Commercial and recreational fisheries contribute more than $30 billion to the economy annually. Coastal tourism is worth another $10 billion each year.

While we need to continue to make progress on all fronts, it is only fair to say that a major success of the Clean Water Act has been to reduce pollution from point source discharges. However, the greatest remaining cause of water pollution in the United States is nonpoint source pollution—polluted runoff not attributable to a particular discharge pipe or outfall.

Unfortunately, the supporters of H.R. 961 ignore the need to deal effectively with nonpoint pollution. The bill before the House repeals the coastal nonpoint pollution control program, which is the only national program that holds any promise of actually abating nonpoint pollution. Repealing the program now is especially ill-timed because the coastal States will be submitting their plans for addressing nonpoint pollution this year. H.R. 961 would instead rely on existing voluntary measures under section 319 of the Clean Water Act. Hundreds of millions have been spent under section 319 over many years with no demonstrable progress.

To make matters worse, H.R. 961 weakens section 319 by pushing back deadlines and relaxing requirements for the State to identify meaningful ways of abating nonpoint pollution.

Under the coastal nonpoint pollution program, coastal States have been working hard for 5 years to prepare their plans for controlling nonpoint pollution. This has not been easy, but progress has been made. Perhaps more importantly, the coastal States support this program. They have, however, sought more flexibility in complying. While I believe that some of the changes sought by the Coastal States Organization will delay progress in reducing nonpoint pollution, that is not really the question. The real question is: Do we want a meaningful nonpoint pollution control program or do we not? If you support healthy fisheries, a strong coastal economy, and beautiful coastlines, the answer must be a resounding "yes."

This amendment strikes language in H.R. 961 that repeals the coastal nonpoint pollution control program. In addition, it makes the changes needed in the nonpoint program to give the States more flexibility in complying. Most importantly, it allows more time for States to meet the program's requirements and allows States to target priority areas for implementation of management measures.

The coastal States have put 5 hard years of work into this program. Don't throw away that progress. I urge the House to support the amendment.

Mr. MINETA. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I am pleased to support the amendment which would preserve the coastal zone nonpoint source pollution control program while incorporating several important modifications to reflect the evolution of the program.

When Congress approved the nonpoint source program targeted at coastal areas, it did so with the recognition that nonpoint source pollution in the coastal zone is a serious and growing problem.

Nonpoint source pollution plays a significant role in nutrient enrichment in estuaries. This can lead to direct effects on human health, such as shellfish poisoning, as well as a loss of recreational uses of the coast and reduced fish mortality.

Unfortunately, the coastal zone is under tremendous stress from human activity. Although the coastal zone accounts for only about 11 percent of the country's area, it is home to about one-half of the Nation's population. Additionally, about 40 percent of commercial and industrial structures built in the United States between 1970 and 1989 were built in the coastal zone.

All of this activity in the coastal zone creates tremendous stress on the near-shore waters. Repealing the provisions for coastal protection will only exacerbate the decline of our coastal resources.

The States and EPA have made great progress in preparing plans to address nonpoint pollution in the coastal zone. States are preparing plans for submission this summer, with implementation likely to begin about 1 year later.

The repeal of the program will mean that the efforts of States and EPA and NOAA will have been largely wasted. More seriously, it also means that no real progress will be initiated on coastal nonpoint source pollution for nearly another 5 years. And that assumes that this bill is enacted soon. That is too long to wait when States are otherwise ready to go.

This repeal of coastal nonpoint programs sends exactly the wrong statement about our commitment to clean coastal waters. We hear repeatedly that we must move this bill quickly to preserve appropriations. One thing is near certain. If this committee approves legislation repealing the coastal program, how can we expect the appropriations committee to provide funding in 1996 or subsequent years?

What we will be creating if this amendment is defeated is an unfunded mandate on coastal States. The requirements will continue, but we cannot count on continued funding.

Second, we will be telling the States to stop in their tracks. Why would a State continue its efforts to establish a coastal zone program, when we are about to repeal it?

The States have had some differences with EPA over implementation of the program. Fortunately, the States and EPA have worked out a number of differences in the implementation of the program. These agreements are reflected in the amendment restoring the program. The amendment addresses the problems which the Coastal States Organization have identified. The coastal States do not want the program repealed—they want it fixed. This amendment does that.

Let us preserve those areas of water pollution control where real problems have been identified, and real solutions to those problems are being put in place. Let us respect the wishes of the States which implement the program, and support the Boehlert amendment.

Mr. SAXTON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would first like to commend the gentleman from New York [Mr. BOEHLERT] for bringing this amendment back to the floor tonight, and I would also like to commend the ranking minority member for having the foresight to support it. I would just say two things.

Mr. Chairman, the first point I would make is that it is impossible for the Congress of the United States to pretend that the issue of nonpoint source pollution does not exist around the coasts of the United States. It is simply impossible, because the problem is there. It is a fact of life as clear as the nose on our faces. Beaches close every year. Red tides and blue tides and green tides, they come from algae buildup because nutrient buildup is there.

Organizations form around our coasts like the Committee to Save Chesapeake Bay, the Barnegat Bay Watershed Association, and other groups like that which recognize the seriousness of this problem. This House in 1990 recognized it as well. That is why we amended the Coastal Zone Management Act to provide for a nonpoint source pollution program and encouraged the States to adopt these programs.

It is dumb to pretend that the problem does not exist, just plain dumb. For us to stop in the middle of the road, amend the Coastal Zone Management Act while pretending the problem does not exist, is equally dumb. I do not know any other way to say it. It just does not make any sense whatsoever.

The second point that I would make, and I know that the chairman did not mean to misrepresent the identity of those organizations that support this amendment, but the Coastal States Organization is an organization made up of 35 States, Territories, and Commonwealths who are coastal States and have an interest in this type of issue and in this legislation. The Coastal States Organization was founded in 1970 to represent the Governors of coastal States.

We have a letter here which at the appropriate time I would like to make part of the RECORD, because it is as clear as a bell in support of the Boehlert amendment. I would just read one paragraph from that letter.

> The serious problem of non-point pollution of the Nation's coastal waters is well-documented. Runoff pollution causes significant economic harm. Commercial and recreational fisheries are being closed. Beaches are being closed to the public. Non-point pollution poses serious human health and safety concerns while at the same time degrades wildlife habitat. This problem needs to be addressed now, before this country suffers further economic losses, health hazards and environmental degradation. With the proper amendments, which we understand your bill contains, the section 6217 program will well serve this purpose.

It goes on to explain other reasons for supporting the program to do something about the very serious problem that remains in the coastal areas, namely, nonpoint source pollution, and the program is well under way with the States all around the coasts of this country.

Mr. Chairman, this amendment has to be passed in order to do any kind of sane continuation to solve the problem that we all must know exists.

Mr. Chairman, I include the letter referred to for the RECORD.

COASTAL STATES ORGANIZATION,
Washington, DC, May 8, 1995.

Hon. JIM SAXTON,
House of Representatives, Washington, DC.

DEAR CONGRESSMAN SAXTON: We are encouraged to hear you will offer an alternative package on the Clean Water Act reauthorization that would amend, rather then

repeal, the coastal nonpoint pollution control program established by §6217 of the Omnibus Budget Reconciliation Act of 1990 (OBRA). We write to support you in this effort.

The serious problem of nonpoint pollution of the Nation's coastal waters is well documented. Runoff pollution causes significant economic harm. Commercial and recreational fisheries are being closed. Beaches are being closed to the public. Nonpoint pollution poses serious human health and safety concerns, while at the same time degrades wildlife habitat. This problem needs to be addressed now, before this country suffers further economic losses, health hazards and environmental degradation. With the proper amendments, which we understand your bill contains, the §6217 program will serve this purpose.

It is no secret that we have had complaints about the §6217 program. Nonetheless, we believe that the immediacy of the coastal nonpoint pollution problem calls for this program to be fixed, not killed. The coastal States have over four years worth of work invested in developing the §6217 programs; they are nearly complete, and are due for submission in July. Why throw four years of diligent work out the window two months before the completion date? By amending the §6217 program as we propose, the Nation will have in place an effective coastal nonpoint pollution control program within 8 months from now. Repealing §6217, on the other hand, will delay getting any program up and running for another five or six years.

We strongly support your efforts to amend, not repeal, the coastal nonpoint pollution control program established under §6217 of OBRA.

Sincerely,

H. WAYNE BEAM,
Chairman.

Mr. BORSKI. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I strongly support this amendment to strike the repeal of the highly effective coastal zone nonpoint pollution program.

The amendment would substitute the language that was proposed by the Coastal States Organization, a coalition of 30 States.

The Coastal States Organization has repeatedly expressed its strong opposition to the repeal of the coastal nonpoint pollution program.

On March 17, the Coastal States Organization said, "Section 6217 should not be repealed, but amended, to establish a workable and effective state-implemented program."

This is what the Coastal States Organization had to say on nonpoint pollution.

The problem on non-point pollution of the nation's coastal waters is real and serious.

Runoff pollution is causing serious economic harm.

Let me repeat that:

Runoff pollution is causing serious economic harm.

Commercial and recreational fisheries are being shut down due to runoff pollution. Beaches are being closed.

Nonpoint source pollution poses human health and safety concerns, while at the same time degrading wildlife habitat.

I am still quoting from the Coastal States Organization.

This problem needs to be addressed now, before this country suffers further economic losses, health hazards and environmental degradation.

They say the coastal States have 4 years of work invested in this program which would be lost if we repeal czara.

The coastal States letter opposes the very approach that is being taken in the bill before us.

The assertion is often raised that the section 6217 program is Duplicative of the clean water act section 319 program. We assert it is the other way around.

By amending the section 6217 program as we have suggested, the Nation will have in place an effective coastal nonpoint pollution control program within 10 months from now.

But, by repealing section 6217 outright and replacing it with the clean water act section 319 program, the Nation will not have a program in place to address this serious problem for another five and a half years after the clean water reauthorization is enacted.

The reauthorization effort will require at least several more months to finally be enacted, making it about six years before any program is in place to address the serious nonpoint pollution programs degrading our coastal waters.

These 30 States said:

We believe the best course of action is not to throw out 4 years of State effort developing their coastal nonpoint pollution control programs, but rather to put in place, at the earliest possibility, a workable and effective program to attack nonpoint pollution of the Nation's coastal waters.

Finally, they said:

We urge you to help us act against the pollution of our coastal waters as soon as possible and not let the problem fester for another 6 years.

Mr. Chairman, I urge that we do what the Coastal States Organization has asked us to do.

They want the program maintained with amendments that would allow impaired or threatened waters to be targeted and to allow additional time for States to receive approval of their programs. This amendment would substitute the language the States are seeking for the repeal in the bill.

This is a case of deciding whether the States who run the programs or Washington knows best. This amendment offered by the gentleman from New York supports the States.

□ 2100

Mrs. FOWLER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I would like to enter into a colloquy with the chairman regarding laboratory biological monitoring criteria and the field bioassessment in section 304 of H.R. 961 as amended by the chairman's en bloc amendment.

It is my understanding, Mr. Chairman, that section 304(a) of H.R. 961 as amended would revise the provisions of the Clean Water Act found in section 303(c)(2)(B) by giving additional direction as to the criteria for whole effluent toxicity, based on laboratory biological monitoring or assessment methods.

The statute as amended gives three criteria. Common to all three criteria is the concept that the test species must have some actual relationship to the receiving water.

The test species cannot, for instance, be selected simply because it is highly sensitive to toxicity. The test species must either be indigenous to the type of receiving water involved or be able to live in the type of receiving water involved.

Mr. SHUSTER. Mr. Chairman, if the gentlewoman will yield, that is correct.

Mrs. FOWLER. It is my understanding that section 304(b) of H.R. 961 as amended would revise section 402 of the Clean Water Act to make it clear that exceedence of a laboratory whole effluent bioassay would not be regarded as a permit violation, but would give rise to a procedure for re-testing and identification of the cause of such exceedence.

However, the permittee can discontinue such procedure if the permittee can demonstrate, through a field bio-assessment, that there is no real world toxicity problem because a balanced and healthy population of aquatic species, indigenous to the type of water involved, exists in the receiving water affected by the discharge.

To complete this demonstration, the permittee must also show that all applicable numerical water quality standards for specific pollutants are met. The point here is that this is a real world demonstration. There is no reference in this provision to laboratory whole effluent bioassays, which can be highly variable and unrelated to real world conditions.

Mr. SHUSTER. The gentlewoman is absolutely correct.

Mr. HEFLEY. Mr. Chairman, will the gentlewoman yield?

Mrs. FOWLER. I am happy to yield to my colleague, the gentleman from Colorado.

Mr. HEFLEY. First, I would like to thank the gentlewoman from Florida for seeking this clarification in section 304(a) of H.R. 961. This section as amended seeks only to bring a sense of place-based science to the development of criteria based biological monitoring to the Clean Water Act.

Second, I would like to commend the chairman of the full committee for including these well crafted provisions on whole effluent criteria and use of biological monitoring in the committee bill. These provisions faithfully address those issues and provisions of my bill, the Publicly Owned Treatment Works Biological Monitoring Use Act, introduced this year as H.R. 634 with our colleague form Arizona, Congressman PASTOR. As further explained in the committee report, this section would bring common sense and due process to the use of whole effluent toxicity tests by substituting enforceable response procedures for locating and reducing

toxicity in place of fines and penalties for test failures. This is important to local governments particularly because of the unreliability of these tests and because sewage treatment plants are not designed to treat whole effluent toxicity as they are designed to treat specific chemicals.

I thank the chairman and the committee for including section 304 and I thank the gentlelady for yielding to me.

Mrs. FOWLER. Mr. Chairman, I thank Congressman HEFLEY for his supportive comments and I thank the chairman for this understanding.

Mrs. LOWEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we have heard a lot of misinformation in this Chamber about the widespread support this bill has from State and local governments. The truth is that the State's interests were ignored when it came to the coastal nonpoint pollution program because their wishes differed with those of polluters and special interests.

Today, coastal counties are growing three times faster than the rest of the country. Already about half of the U.S. population lives in coastal areas. Without adequate protection, this continuing growth will only exacerbate coastal pollution—resulting in more beach closings, more polluted shellfish beds, more contaminated fish, and millions of dollars in lost tourism revenue.

To tackle these threats, Congress enacted the Coastal Nonpoint Pollution Program (section 6217) under the Coastal Zone Act Reauthorization Amendments of 1990. In fact I sponsored the amendment at that time. Section 6217 establishes sensible, State-managed partnerships to address the threats to coastal waters—the majority of which comes from nonpoint sources. It is the only program that will bring about significant reductions in nonpoint source pollution. Yet, H.R. 961 repeals this important program—even though the coastal States themselves want it preserved.

The Coastal States Organization [CSO], which represents the 35 coastal States, territories, and commonwealths, has made it clear that the urgency of the coastal nonpoint pollution problem compels us not to pull the plug on this program.

Let's be clear: This amendment does what the States asked us to do. It adopts their suggestions for providing flexibility and targeting of coastal nonpoint programs. Our amendment will put an effective Coastal Nonpoint Pollution Program in place in less than a year.

Two-thirds of coastal States have invested millions of dollars over the past 4 years crafting innovative runoff control programs that are nearly ready for approval. My own State of New York has invested considerable time and effort in developing a plan that will benefit Long Island Sound, the Hudson River, and the New York City watershed. By making sensible investments early-on, it also promises to save taxpayers millions of dollars down the road—or downstream as the case may be.

Long Island Sound is a $6 billion a year resource for the region's fishing, boating, and recreation industries. In New York and Connecticut, business, labor, and environmental groups have set-aside old disagreements and joined together in developing a plan to clean up the sound. They have forged a powerful coalition. The Coastal Nonpoint Pollution Program is an integral component of those efforts, and now is certainly not the time to pull the rug out from under their feet.

As the coastal States themselves are asking: Why throw 4 years of diligent work out the window 2 months before the completion date? There is no reasonable answer. I urge my colleagues to support their States by supporting this amendment.

Mr. DOOLITTLE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just do not understand. Why do we think we have to have more bureaucracy to stop pollution? That is the old approach. The new approach is an approach of flexibility, consolidation, elimination of unnecessary bureaucracy. All this bill does is streamline, then consolidate. Basically the amendment that is being offered is essentially the same provision that was in the substitute that was rejected decisively by the Members of this House.

This bill eliminates a duplicative program of regulation and it consolidates it into one program. Now the question is why should we do this now, because the answer is no State has this coastal management program up and running. That is why we should do it now. It makes perfect sense to do it now. Because if we wait, then we will have these programs up and running. We still allow the States all of the flexibility they want to target these resources, to identify the programs that they consider to be a problem and to focus resources into that. And when we hear the argument that the States want to be told by the EPA what to do with their land use, et cetera, I just do not buy that, Mr. Chairman.

What we need to do is to reject this amendment just as we rejected the substitute and move ahead, streamline and consolidate and make this a workable program.

PARLIAMENTARY INQUIRY

Mr. MINETA. Mr. Chairman, I have a parliamentary inquiry. Is the Chair going to be alternating between the Republican and Democratic side in terms of recognition?

The CHAIRMAN. That is the attempt of the Chair, yes. Was the gentleman from California seeking recognition?

Mr. MINETA. Mr. Chairman, under that procedure, I believe the gentleman from New Jersey [Mr. PALLONE] was standing.

The CHAIRMAN. The Chair has recognized the gentleman from Maryland [Mr. GILCHREST], a member of the committee. The gentleman from Maryland will proceed. Following the gentleman from Maryland's statement the Chair would intend to come to this side for recognition. The gentleman from Maryland may proceed for a period of 5 minutes.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. GILCHREST. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, the previous speaker did not extend the courtesy of yielding at the conclusion of his time. I would like to directly rebut a couple of comments he made.

First of all he said the States do not want it. He is wrong. The States do want it. As matter of fact, the secretary of state for New York was in town today lobbying for this. I will tell you who wants it: every single coastal State up and down the east coast and west coast and on along the Gulf of Mexico and along the Great Lakes region.

And second, and this is very important as my colleague knows, it is no secret, say the Coastal States Organization, that we have had complaints about this program. Nonetheless, we believe that the immediacy of the coastal nonpoint pollution program calls for this program to be fixed, not killed. And this is very important. The coastal States, 30 of them, have invested over 4 years of work in developing the 6,217 programs; they are nearly complete, with that program and it will be submitted in July. Why throw out, say the coastal States, 4 years of diligent work, throw it out the window 2 months before the completion date.

I thank my colleague for yielding.

□ 2115

Mr. GILCHREST. I need to make a couple of quick statements. No. 1, the previous gentleman, and a number of people, have been talking about giving the States the flexibility, let the States do this, let the States do that.

One comment about the Constitutional Convention, you know, over 200 years ago, the reason the Constitutional Convention came about was because there was a dispute between Maryland and Virginia dealing with the Potomac River because it went across State lines, so there is a Federal role to play, especially when pollution runs downstream.

I would like to draw your attention to this map one more time, the Chesapeake Bay region. We are talking about

nonpoint source pollution, and we are talking about the Coastal Zone Management Act which helps protect pollution along the coastal waters. If you look at Washington, DC, right here, here, we have a certain amount of nonpoint source protection, but you still see this urban area putting pollution, silt, and a number of other things into the Potomac River which gradually gets into the coastal waters.

If you look at the coast of Delaware, Maryland, and Virginia, you see no such thing during that storm, and the reason is because the Coastal Zone Management Act was able to protect this particular area of the coastline, and if we go with the same rule of nonpoint programs and fold the Coastal Zone Management Act into that program, we stand the chance of having this that you see on this map, polluting the Chesapeake Bay and eventually the coastal waters, happening over here along the coast.

The last thing is, there are a lot of people that have approached me on the House floor today and said, "Washington, DC, was built on a wetland. What do you think about that?" I guess there was not a sense of the problem of population and urban sprawl and unbridled development 200 years ago, 200 years ago, let us say 1795; there were 3 million people in the world; 100 years ago in 1895, there were 76 million people in the world. Today, 1995, there are 265 million people in the United States.

Now, there is a certain sense of sharing the resources and what we do or do not do to our neighbor downstream. And so the cumulative impact of population growth which is expanding now to the coastal areas of this country poses a certain threat to the resources of those areas, and it is up to us, this legislative body, to understand how we can help the State and local communities create an environment where we can manage resources and still have people living in areas where they do not have to worry about their drinking water, their natural resources.

And one more comment before my time is up, I want to point to the areas that have urban sprawl and urban development. If you will notice, during this rain storm, all of the silt that comes down the Potomac River, but you do not see that because of the protection of the coastal areas along Delaware, Maryland, and Virginia.

So I urge my colleagues to vote for the amendment.

Mr. PALLONE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I will not use the 5 minutes.

I did want to make reference though to a previous speaker, the gentleman from California, and his statement about the vote being very close on the Saxton-Boehlert amendment, and also the suggestion that somehow this amendment was not in order. I would point out that the vote was actually fairly close on the Boehlert-Saxton amendment, and also that this amendment is a very important part of that overall substitute which I think should be addressed separately.

I think one of the things that needs to be pointed out tonight is that the amendment offered by the gentleman from New York [Mr. BOEHLERT] basically is a reasonable compromise, if you will, based on the recommendations of the Coastal States Organization. The amendment does not take us back to the original language of the existing statute but, rather, it is a carefully crafted compromise that allows States that have not received Federal approval of their coastal zone management program to have 30 months to submit their coastal nonpoint source pollution program. It only applies to threatened or significantly degraded waters as opposed to coastal waters generally. It allows for prioritization of areas for implementation of management measures. It allows for conditional approval when States request additional time to complete their plans without penalty.

The bottom line is the gentleman from New York [Mr. BOEHLERT], again, as part of this substitute, has drafted something that seeks to change the language, if you will, of the current law without sacrificing the mandatory and enforceable nature of the original law, and I think that is the key.

Nonpoint source pollution is really the problem that we face with regard to water quality in the future. Over the next 5 or 10 years this is likely, if it is not already, to become the major source of pollution that would we have, and the committee bill makes this whole program voluntary.

Basically what the gentleman from New York [Mr. BOEHLERT] is trying to do is to put the teeth back into the program, preserving the program while also looking at it in a way that I think is very reasonable and manageable.

I have to say, Mr. Chairman, I think this is a very important amendment, because section 6217 of the Coastal Zone Act reauthorization amendments is the only enforceable program developed by Congress to prevent nonpoint source pollution, and H.R. 961 basically repeals this entire section 6217 and, instead, the bill replaces the enforceable provisions with a proviso that State programs make reasonable progress, essentially making the program voluntary.

As my own State of New Jersey has made significant progress with regard to this program, and is very proud of the progress we have made, there are about 19 other coastal States, including New Jersey, that went through a very helpful threshold review, with respect to these plans. In our State in the summer of 1994, we did a review. We held three public hearings this month. We will be submitting our completed section 6217 program proposal in July.

All of the coastal States are currently making progress in development of their coastal nonpoint programs. Thousands of dollars and years of efforts have been expended, and proposals for new programs have been made.

The section 6217 program has already gained a significant momentum, and shows great promise. But to undermine it with a less substantive program that decreases predictability of action would greatly increase the risks to valuable coastal resources, and it would penalize those coastal States that have made a concerted effort to comply with existing law.

I ask the House, do not pull the rug out from under the program. Support the Boehlert amendment. I is what the coastal States want.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I do not intend to take my full 5 minutes either.

But this is a very, very important issue to coastal States. I do not believe this amendment does any damage to the underlying bill. I think it is, in fact, perfectly compatible with the underlying bill.

My colleague from California says we do not want more bureaucracy, we are trying to stop bureaucracy, we are trying to create local control. That is exactly what this amendment does.

Now, California takes up almost the entire coast of the Western United States. They only have a couple of neighbors to worry about.

Little States in New England have lots of other States to worry about, and so New England with its number of little States along the coast, needs a regional plan, needs Federal conformity. And this amendment preserves the underlying coastal zone management law, but reverts to the States the kind of flexibility, the kind of relief from Federal bureaucracy and Federal control that we all know makes for a more cost effective and solid response, that combines the environmental interest of the State with the economic interest of a State.

Now, the Governors have proposed, through those who have worked to make these plans and to implement that law, three things, and let me tell you how they affect my district. The reforms in this plan will allow States the flexibility to delineate the scope of the management area. That means EPA cannot come in and tell you that every little stream that feeds into every river is part of the coastal area management section. So it means that a lot of my farmers are no longer going to be attacked by EPA to do things that they do not know how to do, and that we do not know how to help them to do. That ability in this law to let

States delineate their area, let States even select the projects that they think are important, and implement those projects, that is exactly what the States are asking for, and that is what we are going to get.

But why do we need the underlying law?

We need it because no matter how much money Connecticut puts into this, if Massachusetts does not, if Maine does not, and if New York does not, then we will lose those fisheries and those shell beds that we have spent millions of dollars to bring back on our intracoastal water, and if we lose those, we lose jobs in an industry that is growing. We lose a coast that attracts tourism.

This is a big economic issue for our State, and I do not think the interior States quite understand what a big economic issue this is for the coastal States and how impossible it is going to be for us to achieve the level of coastal water cleanliness that is essential to our economies as well as to our environments if we do not have the Federal uniformity that the underlying coastal zone management law provides, complemented by the reforms that the Governors have asked for.

This amendment does no damage to the underlying bill. It achieves the objectives of the underlying bill in harmony with the consistency of principle and program that an area of old industrial States, which is what the Northeast is, so we have got lots of old site land, that is a problem in terms of nonpoint source pollution, gives us that uniformity of goal that will return our shores and our shoreline waters to the level, to the quality that will assure the economic benefits of clean coastal waters as well as the health and environment benefits.

So I urge you to think about what is the difference between living in the middle of the United States and what is the responsibility of the coastal States. And, please, do not take from us the program that we all now support and give us the flexibility we need to make it work right economically and environmentally.

Mr. BOEHLERT. Mr. Chairman, will the gentlewoman yield?

Mrs. JOHNSON of Connecticut. I yield to the gentleman from New York.

Mr. BOEHLERT. Mr. Chairman, I thank the gentlewoman for a very eloquent statement.

I want to point out it is not just the 23 coastal States, also all the Great Lakes States are heavily involved and deeply interested in this. The Coastal States Organization represents 30, 30 coastal States, Great Lakes and coastal States, so it is very important.

I thank the gentlewoman for a fine statement.

Mr. TAUZIN. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I realize the time is late, but I think it is important to correct the RECORD.

You heard tonight that all of the coastal States are in support of this program called CZARA 6217. That is incorrect.

We are in possession of a letter from the State of Louisiana opposing that section of the CZM law and supporting the provisions of the bill that would, in fact, fold language back into section 319 of the current Coastal Management Act. We are in possession also of letters from the State of Wisconsin indicating support for the bill and for elimination of the coastal nonpoint pollution control program contained in section 6217, and a letter from the Texas department of agriculture similarly in support of the changes embodied in the bill.

Let me correct another point in the RECORD. The Boehlert amendment that contained the same amendment we now debate was not defeated on a close vote. If 58 votes is a close vote, I am very surprised in this House. That is a very good margin.

Let me tell you why this amendment ought to be defeated and why the bill, as it recommends changes in the law, should be approved. The bill that we are talking about does, in fact, repeal a section of the Coastal Zone Act, not the act that was passed years ago; it repeals a section of the act that was adopted in a budget resolution in 1990, not through the normal process. The section of the Coastal Zone Management Act that the bill repeals was not adopted as a part of the original act. It was adopted as a part of a budget resolution, an amendment attached to a budget resolution, not the normal process by which we write environmental law in this body.

It was attached in 1990, and those programs are about to go into effect unless we change it here tonight.

Now, why should we change it here tonight? Because if we do not change it here tonight, what will go into effect is a program that mandates a one-size-fits-all Federal mandate program on the States inflexible, that gives the EPA the power to determine appropriate land use practices in coastal zones, that gives the EPA the power to determine coastal zone boundaries, unlike the current law which allowed the States to make those determinations.

□ 2130

If we do not repeal that section, you will be giving in effect the EPA that authority. What the bill does is repeal that section, fold this section of environmental law protection for coastal zone into Section 319 where the States have the power to focus their resources on the critical coastal areas they want to work on and, in fact, protect those areas as much as any of my colleagues in this House want to have them protected.

Mr. PETRI. Mr. Chairman, will the gentleman yield?

Mr. TAUZIN. I yield to the gentleman from Wisconsin.

Mr. PETRI. I just want to reiterate what you said as far as the State of Wisconsin is concerned. We are just a coastal State. We do oppose the Boehlert amendment. DNR has worked on this very closely with Chairman SHUSTER and others. We want a strong nonpoint source program. We have to have an integrated one, not a separate one for coastal, and for lakes, and for rivers, and to get the job done, and, to do it most effectively, we want one program, not a proliferation of many programs.

So the gentleman is absolutely right.

Mr. TAUZIN. I thank the gentleman.

Let me say to my colleagues and point out again, if you believe your State ought to have the flexibility to adopt its coastal zone program to the needs of your coastal zone, then you vote against the Boehlert amendment. If you like Federal mandates and new Federal EPA authorities to determine land use restrictions and the coastal zone of your State, then vote for Mr. Boehlert's amendment because that's what it does. It ought to be defeated.

Mr. QUINN. Mr. Chairman, I rise in support of this amendment to reauthorize the coastal nonpoint source pollution control program known as section 6217.

This program is important because our coastal States have unique and significant problems. While there have been some complaints about the 6217 program, we should look at ways to improve not kill it.

I had representatives from my State come to me to announce that New York will have a management program for approval in July. Approximately 18 States will be ready to go on September. We can not end the program now.

To repeal this program would punish the States that are making good faith efforts to work on their nonpoint pollution. To repeal this program would reward States that have not been making strong efforts to address the nonpoint problems specific to the coastal States.

I am worried that to repeal the program now will delay any progress that it ready to be made.

I rise in support of the gentleman's amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. BOEHLERT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. BOEHLERT. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 224, noes 199, not voting 11, as follows:

[Roll No. 314]

AYES—224

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barcia
Barrett (WI)
Becerra
Beilenson
Bentsen
Bereuter
Berman
Bilirakis
Bishop
Blute
Boehlert
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Bryant (TX)
Bunn
Callahan
Cardin
Castle
Chapman
Clay
Clayton
Clyburn
Coleman
Collins (MI)
Conyers
Costello
Coyne
Davis
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Doyle
Durbin
Ehlers
Ehrlich
Engel
English
Eshoo
Evans
Farr
Fawell
Fields (LA)
Filner
Flake
Flanagan
Foglietta
Foley
Forbes
Ford
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilchrest
Gilman
Gordon
Goss
Graham
Greenwood
Gunderson
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hefley
Hefner
Hinchey
Houghton
Hoyer
Jackson-Lee
Jacobs
Johnson (CT)
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kaptur
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kleczka
Klink
Kolbe
LaFalce
Lantos
Lazio
Leach
Levin
Lewis (GA)
Lincoln
LoBiondo
Lofgren
Longley
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCollum
McDermott
McHale
McHugh
McKinney
McNulty
Meehan
Meek
Menendez
Meyers
Mfume
Miller (CA)
Miller (FL)
Mineta
Minge
Mink
Molinari
Mollohan
Moran
Morella
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Peterson (MN)
Pomeroy
Porter
Quinn
Rahall
Ramstad
Reed
Reynolds
Richardson
Rivers
Roemer
Ros-Lehtinen
Roukema
Roybal-Allard
Rush
Sabo
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schroeder
Schumer
Scott
Serrano
Shaw
Shays
Skaggs
Slaughter
Smith (NJ)
Spratt
Stark
Stokes
Studds
Stupak
Taylor (MS)
Thompson
Thornton
Thurman
Torkildsen
Torres
Torricelli
Towns
Tucker
Upton
Velazquez
Vento
Visclosky
Volkmer
Walsh
Ward
Waters
Watt (NC)
Waxman
Weldon (PA)
Whitfield
Williams
Wilson
Wise
Wolf
Woolsey
Wyden
Wynn
Yates
Young (FL)
Zimmer

NOES—199

Allard
Archer
Armey
Bachus
Baker (LA)
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bevill
Bilbray
Bliley
Boehner
Bonilla
Bono
Brewster
Browder
Brownback
Bryant (TN)
Burr
Burton
Buyer
Calvert
Camp
Canady
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
de la Garza
Deal
DeLay
Dickey
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Emerson
Ensign
Everett
Ewing
Fazio
Fields (TX)
Fowler
Funderburk
Gallegly
Ganske
Gekas
Geren
Gillmor
Gonzalez
Goodlatte
Goodling
Green
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Heineman
Herger
Hilleary
Hilliard
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson, Sam
Jones
Kasich
Kim
King
Kingston
Klug
Knollenberg
LaHood
Largent
Latham
LaTourette
Laughlin
Lewis (CA)
Lightfoot
Linder
Lipinski
Livingston
Lucas
Manzullo
McCarthy
McCrery
McDade
McInnis
McIntosh
McKeon
Metcalf
Mica
Montgomery
Moorhead
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Petri
Pickett
Pombo
Portman
Poshard
Pryce
Quillen
Radanovich
Regula
Riggs
Roberts
Rohrabacher
Rose
Roth
Royce
Salmon
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Tiahrt
Traficant
Vucanovich
Waldholtz
Walker
Wamp
Watts (OK)
Weldon (FL)
Weller
White
Wicker
Young (AK)
Zeliff

NOT VOTING—11

Baker (CA)
Boucher
Bunning
Collins (IL)
Fattah
Jefferson
Lewis (KY)
Moakley
Peterson (FL)
Rangel
Rogers

□ 2152

Messrs. REYNOLDS, CHAPMAN, MILLER of Florida, CALLAHAN, McCOLLUM, GRAHAM, and BISHOP changed their vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Mr. TATE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. NORWOOD) having assumed the chair, Mr. McINNIS, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 961) to amend the Federal Water Pollution Control Act, had come to no resolution thereon.

personal explanation

Mr. BUNNING of Kentucky. Mr. Chairman, I was back in Kentucky on personal business attending the funeral of Shirley Rogers, the late wife of my Kentucky colleague, HAL ROGERS. I was not present for rollcall votes Nos. 311 through 314.

I would like for the RECORD to show that if I had been present I would have voted "yes" on rollcall vote No. 311, "no" on rollcall vote No. 312, "no" on rollcall vote No. 313, and "no" on rollcall vote No. 314.

PERSONAL EXPLANATION

Mr. LEWIS of Kentucky. Mr. Speaker, on May 10, 1995, I attended the funeral for the wife of my esteemed colleague, Mr. Hal Rogers. Consequently, I was not available to vote on a number of measures pertaining to H.R. 961, the Clean Water Act. Had I been available, I would have cast the following votes:

Rollcall No.:	Vote
311	Yes
312	No
313	No
314	No

PERMISSION FOR CERTAIN COMMITTEES TO SIT TOMORROW, THURSDAY, MAY 11, 1995, DURING THE 5-MINUTE RULE

Mr. HAYWORTH. Mr. Speaker, I ask unanimous consent that the following committees and their subcommittees be permitted to sit tomorrow while the House is meeting in the Committee of the Whole House under the 5-minute rule.

The Committee on Agriculture; the Committee on Banking and Financial Services; the Committee on Commerce; the Committee on Economic and Educational Opportunities; the Committee on International Relations; the Committee on Resources; the Committee on Transportation and Infrastructure; the Committee on Veterans' Affairs; and the Select Committee on Intelligence.

Mr. Speaker, it is my understanding that the minority has been consulted and that there is no objection to these requests.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. NORWOOD). Under the Speaker's announced policy of January 4, 1995, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

THE REPUBLICAN BUDGET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon [Mr. DEFAZIO] is recognized for 5 minutes.

Mr. DEFAZIO. Mr. Speaker, we finally got an outline of the proposed Republican budget. It is in violation of

the Budget Act, a bit late, but better late than never.

I have got to say there is one thing I find I have in common, which is I share their objective to get deficit spending under control and to bring the Federal Government's budget into balance by the year 2002. But past that point, I find we have tremendous differences, and they revolve around the basic approach taken by the Republican Party on this matter.

□ 2200

That is, Mr. Speaker, their first assumption is that we will not reduce military spending. That is the largest discretionary item from the Federal budget. The Pentagon will take no reductions. The Pentagon, which will have a budget in fact increased above the President's requests in this budget, a budget which is equivalent to the last budget of the great cold war with the Soviet Union, we will still fund 100,000 troops in Europe waiting for the invasion of the Soviet Union into West Germany, unified Germany anyhow, somewhere into that region.

We will still spend $60 billion a year in defense of Japan against the Soviet Union. We will still produce stealth bombers with no objective, at the cost of $1 billion each. We will produce a myriad of other weapons systems that we no longer need that would not have worked in any case against our principal adversary of 10 years ago. However, we cannot ask for a penny of cuts at the Pentagon. We know they are spending every dollar wisely. That is off the table.

Then we come to the revenue side. On the revenue side, actually what we are going to do is reduce revenues in order to reach a balanced budget. That does not make sense to most Americans, Mr. Speaker. Most Americans who are having a little trouble making their car payment, house payment, utility payment, and buying clothes for their kids would not think they could reduce their income and get their home budget in balance.

No, indeed, through the miracles in budgeting here in the U.S. Congress, that is exactly what we are going to do. According to the Republican budget proposal, we will reduce income by $340 billion, not decrease the military by a penny, and we will get to a balanced budget. One might ask "How are we to do that, given that the largest single discretionary expenditure will not be reduced, the military; given the fact that we will reduce our incomes by $350 billion?" We are going to do it by gutting virtually everything else in the Federal budget that is important to average and working American families.

Mr. Speaker, we will eliminate the Women, Infants, and Children Program. We will cut back on the School Lunch Program. We will reduce student loans, dramatically. After all, who needs a student loan program? Certainly not the wealthy, who are going to get very generous tax cuts under this proposal. In fact, they will have so much discretionary income they will be buying another BMW. They are not worried about sending their kids to college.

Middle-income families, average folks, those struggling to find a way for their kids to go to college, sorry, the Federal Government has to balance its budget, and it has to give tax cuts to the wealthy, and it has to give tax cuts to the largest corporations, repeal the alternative minimum tax, and it cannot find a penny of reductions in the military budget.

This is all laid out here in a rather brutal reality by the Republican majority in this House. I do not believe that these are the priorities of the American people. They are certainly not my priorities. We have just received these documents, so, as I stand here, I am paging through to look for some of the more interesting portions.

We can find places to cut back in natural resources and environmental protection. We can find places to cut back in energy development, particularly in renewable energy resources and cleanup of hazardous waste sites. We cannot find much to cut in agriculture, $13 billion a year in subsidies. Sam Donaldson getting $75,000 a year to not raise sheep on the ranch that he does not live on, we cannot cut that. We could not cut Sam Donaldson. He might give some negative press to the majority party. Business as usual. When the Democrats were in charge, we could not cut Sam Donaldson. Now the Republicans are in charge, they cannot cut the Sam Donaldsons of the world. He should get the $75,000 on the ranch on which he does not live, he is going to live there some day. This is not the bare bones budget we need, and it does not make cuts in the proper priorities.

COMMENDING UNSUNG HEROES

The SPEAKER pro tempore (Mr. NORWOOD). Under a previous order of the House, the gentleman from California [Mr. HUNTER] will be recognized for 5 minutes.

Mr. HUNTER. Mr. Speaker, let me just briefly answer my friends who just spoke about the defense budget numbers. From my calculations the President's defense budget cuts $127 billion below the Bush baseline. In practical terms, that means that under this President, we have reduced the Army from 18 divisions to 12 divisions. We have reduced our air wing equivalents from about 24 to 13. We have reduced the Navy from about 540 ships to about 340, almost a 40 percent cut. We are going down radically.

However, Mr. Speaker, I would like to talk about something else tonight, because the gentleman mentioned defense, and this happens to be the anniversary, May 10, 1972, of our colleague, the gentleman from California, DUKE CUNNINGHAM, being shot down in the skies over Vietnam, having shot down five MiG aircraft, and I understand at least three of them were in the air, and being nominated for the Congressional Medal of Honor for flying into a pack of MiG aircraft that were on his wingman's tail, and probably would have killed his wingman, had DUKE not flown his aircraft into that enemy air formation.

DUKE, we commend you.

While we are at it, I thought I might talk about a few other unsung heroes. Those are people who have been taking a lot of hits lately from the President. They are called talk show hosts. We have a few of them in San Diego. One of them, Roger Hedgecock, is a leader of talk radio in KSDO in San Diego. The President apparently does not like him. He criticizes the President a lot. He led a group of citizens back here a few weeks ago, when we had the balanced budget vote in the House of Representatives, and Roger Hedgecock staged his talk show, his talk radio show, from the Halls of the U.S. Capitol. He brought back in excess of 100 U.S. citizens, people from all walks of life, who walked door to door, not professional lobbyists, but people who went door to door and talked to their Congressmen and other Congressmen about voting for, of all things, a balanced budget.

We have another talk show host, Peter Weisbach, in San Diego, KOGO radio, who thought that perhaps the Mexican bailout, the $20 billion of taxpayers' money that we sent to Mexico, was not a good idea; obviously, somebody else who disagreed with the President's policies. The President apparently does not like that.

Mike Reagan is another talk show host who appears on KOGO, and many times I have been on Mike's show talking about American foreign policy. He has educated our listeners in areas in which most Americans do not pay a great deal of attention. I can remember listening to Stacy Taylor of KFMB, my neighbor up in Alpine, CA. Stacy is a talk show host that you might classify as liberal or moderate, except for his strong belief in the second amendment. I do not know exactly how you would classify him, but I think that the way he conducts his show is provocative. I think it is informative. He takes me on a lot, takes on a lot of the political figures, takes on the President now and then, and that is not bad.

Lastly, we have Hudson and Bauer of KFMB in San Diego. They were invited by President Clinton when he thought maybe he could get talk radio on his side to come back and have their talk show located on the White House grounds.

I can remember walking there through the talk radio, through all the

talk show hosts who were located on the White House grounds, at President Clinton's invitation, giving their commentary on American politics, and this President's performance. When the President thought that he could bring these people to his side and swing opinion in his direction, he lobbied the talk show hosts. He thought they were great people. However, they listened to people, and most Americans are fairly conservative. Apparently, he has not appreciated the heat that he has taken from these people.

In a couple of weeks, Mr. Speaker, we are going to celebrate and commemorate the Americans who lost their lives in battles in this country and outside of this country, from Bunker Hill to Belleau Wood to Inchon in Korea, to Khe Sanh, to the Persian Gulf, and those Americans who lost their lives fought, of course, for that broad array of freedoms that we generally describe as liberty in this great land. One of those greatest freedoms is the right to criticize your elected officials.

Therefore, Mr. President, when you listen to talk show hosts and you do not like to the fact that they are criticizing you or taking you on, do not worry. Do not complain. It is the sound of freedom.

REPUBLICANS WANT TO BALANCE THE BUDGET ON THE BACKS OF AMERICANS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas [Ms. JACKSON-LEE] is recognized for 5 minutes.

Ms. JACKSON-LEE. Mr. Speaker, I think it is important that we are facing up to a very important decision, albeit late, and that is the budget for the people of the United States of America. I stand here this evening because a couple of weeks ago the State Comptroller for the State of Texas announced that through the rescission cuts, the State of Texas and its people will lose $1.5 billion.

Yet, now, we have a budget proposal that takes those dollars on the backs of Texans and eliminates some 283 programs, as proposed by Republicans, and agrees to give the full measure of tax cuts already denied and rejected by the Senate Committee and the Budget chairman, Senator DOMENICI. This is the tax cut that will give those individuals making $30,000 or less a mere $124 a year, and the tax cut that gives the real working Americans, along with those Americans making $30,000 or less, some $760; that is, those making between $30,000 and $75,000.

In the course of this budget proposal, which is focused particularly on the backs of young people, on teachers, on students, and on the elderly, we first come full force to cut the Department of Energy, at the same time that the Secretary of Energy is reforming and reinventing her own department.

Here, now, we are a country which indicates a great interest in technological discoveries, a great need for a renewed energy policy, and many of the environmental efforts that have been made by the Department of Energy. Now we want to eliminate that department, just as we are addressing the focus of that department, which is to develop a real domestic energy policy, one that will address the needs of business, create jobs, and yes, open up opportunities internationally.

That department has been targeted for elimination, not improvement, not downsizing, but elimination, so I guess we will throw technology to the winds, the environment to the winds, and certainly, we will throw the opportunities for bringing the energy industry to the table to discuss important issues of developing a domestic energy policy that many could agree with, we will throw that to the winds, too, by eliminating the department.

The Department of Commerce, which over the last couple of years has generated more business for Americans than any other department, rather than downsizing and effectively making it work for the American people, this budget proposal targeting the backs of Americans wants to eliminate the Department of Commerce.

We go further. Many of us have had the opportunity, particularly in the city of Houston, to see the Americorps students working, the domestic Peace Corps. We have seen them working to help communities, but as much as them working to help communities, we have seen them build opportunities for themselves by providing for themselves to go to college.

What are we trying to do with this new budget proposed by the Republicans? Shut down departments that are effective and working, rather than creating opportunities for downsizing, and over a measured period of time bringing down the deficit, as all of us could agree with, now we are attacking Americorps and totally eliminating it, a program that has gone into the trenches of America and worked with communities to improve housing, to clean up neighborhoods, to work with underprivileged children, to work with seniors, to build buildings, if you will, and to help those particular areas to cut down on their costs. We are eliminating it.

Then we are so generous-spirited and generous-hearted, along with the $280 billion cut from Medicare, which our seniors have vigorously indicated "What more do you want from us," we now want to cut from the Republican budget now being discussed, as we speak, housing for the elderly; individuals who have worked all their lives, but possibly worked in jobs that would not allow them to have the kinds of savings that you need, and they are provided for in these group retirement homes that are assisted by our housing authorities throughout this country. Yet, we wish to cut that. No alternatives could be offered, other than to cut housing for the elderly, along with Medicare.

The State Bar of Texas, which I have had the great pride of serving as a member of the legal profession on the board of directors on that organization, comprised of law firms and sole practitioners and attorneys who understand what it is to serve the public, they pleaded in my office for us to preserve the Legal Services Corporation; not a group that goes out and instigates litigations, as would be accused by Republicans who are apparently cutting it out, but those who would help individuals who do not have the ability to secure their own lawyers; the Legal Services Corporation, helping mothers get child support payments, working with the elderly, working with those legal immigrants who come in and need services. Yet, they are totally cutting out Legal Services.

We do not have a budget, we have a joke. We have something that is going to hurt the citizens of Texas, hurt the citizens of Houston. We need to get down to the business of working for America. Mr. Speaker, we need a real budget to work for Americans.

□ 2215

THE FLAT TAX

The SPEAKER pro tempore (Mr. NORWOOD). Under a previous order of the House, the gentleman from Pennsylvania [Mr. FOX] is recognized for 5 minutes.

Mr. FOX of Pennsylvania. Mr. Speaker, I appreciate the opportunity to address the House on an important issue. Now that the House has completed work on the Contract with America is a good time to begin looking past the first 100 days to future legislative goals.

I believe, Mr. Speaker, that a flat tax is in America's future. It is an idea which is catching fire across the Nation. What is it about the flat tax that Americans find so attractive? I believe the answer can be summarized in three words: trust, simplicity, and fairness.

Today's Tax Code is artificially and unnecessarily suppressing living standards. The first problem in today's code is the fact we have double taxed business earnings, which places a strong bias against savings and investment. This makes saving and investing much less attractive relative to consumption.

Capital, as we know, is the lifeblood of the economy. Without capital, workers cannot enhance their productivity and their wages stagnate. Today's double, even triple taxation of income discourages saving, reduces the pool of capital available to entrepreneurs and

workers, slows productivity and wage growth.

A second problem with today's tax code is its high marginal rates.

The third problem with today's tax code is its complexity and its hundreds of sections, thousands of pages of regulations. The rates are high, loopholes abound, and noncompliance is rife because taxpayers feel that the code is written for well-organized special interests and not for them.

Mr. Speaker, perhaps most disturbing, the complexity and unfairness of the code lead our citizens to take an excessively jaded and cynical view of their government.

Fourth, I believe the overall level of taxes, Mr. Speaker, is too high, especially for families with children. The average family now pays more in taxes than it spends on food, clothing and shelter combined.

There are two major flat tax proposals, Mr. Speaker, one in the House and one in the Senate. The one in the House is Congressman DICK ARMEY's. Under his plan, all income would be taxed once at 17 percent. There would be no credits or deductions. Under his flat tax, there would be no taxes paid by single individuals earning $13,100 or less and couples earning $26,200 or less. A corporation would simply subtract expenses from revenues and pay 17 percent on the remainder.

Senator ARLEN SPECTER has also offered a flat tax proposal. His is a 20-percent tax rate but has a couple of deductions. It would have a home mortgage deduction retained for homes up to $100,000, and $2,500 in charitable deductions, and maintains payroll withholding.

America's current tax is a patchwork quilt. It should be replaced. The need for tax simplification is self-evident. Americans now spend approximately 5.4 billion hours each year just filling out the tax forms, Mr. Speaker. In 1994, businesses spent approximately $127 billion in compliance with the Federal tax laws, and individuals another $65 billion.

Both proposals meet the test, I believe, of fairness, simplicity, and economic neutrality. Americans would fill out merely a small postcard and answer a few easy questions, instead of toiling over reams of papers and instructions. These changes will get the IRS and the government off the backs of individual and corporate taxpayers, and will allow all of us to redirect our energies to more productive pursuits.

I hope that our fellow colleagues in the House, Mr. Speaker, will look over these proposals in the coming months, and hope they will find favor with them.

ADDRESSING JAPANESE TRADE DEFICIT

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio [Ms. KAPTUR] is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I come to the well this evening to discuss a very important trade dispute that is going on between the United States and Japan, a negotiation that has now dragged on through three different Presidents relating to the major portion of the trade deficit between the United States and Japan, the automotive industry and the automotive parts industry.

I rise this evening to let the American people know that these negotiations have hit an impasse and today we met with the ambassador of the United States, our Trade Ambassador, Mr. Kantor, and were informed that the administration intends to, for the first time, the first administration in over a decade, intends to impose trade sanctions on the Nation of Japan in order to help pry open Japan's market not just to goods from the United States but hopefully as a result of our success there if it can occur to the goods of other nations as well.

I think that the Clinton administration should be commended for bringing us to this point. We rise this evening also to say to them, hang tough. As they do this and try to pry open that market which if it were open and we actually had trade equity with Japan in automotive, we literally could construct in this country an additional 100 plants each employing over 5,000 people. That is how bad the differential has become between our two nations.

The other point I would like to raise before calling on my very capable colleague from the State of Ohio, Mr. BROWN, is to say that we hope that as these sanctions are imposed that the major auto manufacturers of this country and the major automotive parts manufacturers of this Nation will not raise prices but will use the power that the people of the United States are giving them through these negotiations to continue to gain market share in this country and to begin to gain additional market share in Japan.

We wish the Clinton administration well as the President returns from Russia. We want him to be successful not just in the sanctions but hopefully in the case that will be placed before the World Trade Organization in Geneva.

Mr. Speaker, I yield to the gentleman from Ohio [Mr. BROWN].

Mr. BROWN of Ohio. I appreciate the work the gentlewoman from Ohio [Ms. KAPTUR] has done in fighting for fair trade. All of us appreciate the courage and the commitment that President Clinton and Trade Representative Kantor have shown in standing tough with Japanese. When we have a $25 billion trade deficit with the Japanese on auto-related, automobiles and auto parts, $25 billion, that costs us somewhere in the vicinity of, it is literally hundreds of thousands of good-paying industrial jobs in this country that have gone to Japan because their trade doors are closed to American goods. This standing tough that the President and Trade Representatives Kantor are doing right now will mean as they pry open, as it pries open the Japanese market, it will mean more jobs for Ohio, it will mean more jobs all over this country, good-paying industrial jobs that create middle-class families, that give people the opportunity to send their children to school, to send their children to college, to provide for their retirement, to have good-paying jobs and nice homes in nice neighborhoods and all that the auto industry can do if in fact the President and Trade Representative Kantor hang tough like you said. I think they will. All of us here in a bipartisan way would encourage them to do that.

I also want to echo what the gentlewoman from Ohio [Ms. KAPTUR] said, it is important that as this happens, as we stands up to the Japanese this time finally, and a President is actually doing that as President Clinton is, that auto companies do not raise prices, that auto companies expand their market share. That is what will create jobs in Lorain, OH; in Avon Lake, OH; in Twinsburg, OH, and all over the United States, good-paying industrial jobs to create a stronger better-paid middle class.

Ms. KAPTUR. I thank the gentleman from Ohio for his leadership in this effort and with the dollar situation around the world, the value of the dollar versus the yen, there is certainly no reason for our companies to raise prices here or in other places but rather to go after market share, especially when the people of the United States are standing together through their elected representatives here in Washington and fighting for this key lodestar American industry, the automotive industry.

When you think about it, a third of the market in this country, both automotive and automotive parts, is comprised of foreign product that we import into the United States not just from Japan but from everywhere. It is interesting to look at Japan. Only 4 percent of their market, the second largest industrial power in the world, comes from anyplace else, 4 percent of their market versus one-third of ours.

Mr. BROWN of Ohio. If the gentlewoman would yield, one of the things that Ambassador Kantor told us today at a meeting with a group of about a dozen Members is that the Japanese have found a way with fixing cars with auto repairs of shutting out American auto parts so that if you are an auto consumer in Japan, you go to get your car fixed and you have got to use Japanese auto parts.

Ms. KAPTUR. We ask the President, hang tough with Japan.

LEGISLATION HONORING HARRY KIZIRIAN

The Speaker pro tempore. Under a previous order of the House, the gentleman from Rhode Island [Mr. REED] is recognized for 5 minutes.

Mr. REED. Mr. Speaker, it is my pleasure to introduce legislation today, along with my colleague from Rhode Island, Mr. KENNEDY, to designate the main U.S. Post Office in Providence, RI, as the "Harry Kizirian Post Office."

Harry Kizirian is a truly remarkable individual. The most decorated living veteran in Rhode Island, Harry displayed qualities of leadership and courage at a very young age. At the age of 15, Harry had to go to work to support his widowed mother, but he continued to maintain his excellent academic record at Mt. Pleasant High School in Providence. Upon graduation, Harry enlisted in the United States Marine Corps and was sent to Okinawa.

On Okinawa, Harry fought with tenacity and courage, while engaged continuously in fierce combat. Harry was severely wounded while leading an infantry assault. For his extraordinary heroism, Harry was awarded the Navy Cross, the Bronze Star with V Device for Valor, the Purple Heart with a Gold Star, and the Rhode Island Cross.

Upon Harry's return, he immediately went to work at the main post office in Providence where he had worked during high school. At work, Harry displayed the same commitment and teamwork he showed on the frontlines at Okinawa, and was eventually appointed as the Postmaster. He was confirmed by the United States Senate in 1961, and held the position of Postmaster for 25 years.

Throughout his career with the Postal Service, Harry also devoted much of his time to the community, serving on numerous boards and committees. Harry served on the board of directors for Butler Hospital, Big Brothers of RI, RI Blue Cross, the RI Heart and Lung Associations, and numerous others.

One of Harry's greatest accomplishments was raising a wonderful family. He and his wife, Hazel, raised five children and have three grandchildren.

Harry has served his country in every capacity: in the military, as a civil servant, as a devoted husband and father, and as a loyal American. Harry Kizirian is a source of inspiration for the young and old, and he is a particularly cherished member of Rhode Island's proud and vibrant Armenian community.

This bill would commemorate his generosity and valor for future generations, and it would pay tribute to a remarkable gentleman who has given so much to his nation, his community, and his family. I urge my colleagues to join me in honoring Harry Kizirian by supporting this bill.

CALLING FOR AN APOLOGY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from West Virginia [Mr. RAHALL] is recognized for 5 minutes.

Mr. RAHALL. Mr. Speaker, yesterday in a special order, I expressed my total disbelief that, at an event convened at taxpayer's expense, a Member of this House would publicly charge that a Member of the U.S. Senate should be tarred and feathered and run out of the country.

Was this a joke, Mr. Speaker? From press accounts, what we do know is that it was a reaction to a constituent's call for the murder of a Member of the other body, and that the murderer be given a medal.

The Member from Washington State in question with whom I have spoken, did not object to the murder of a U.S. Senator. The member did not attempt to argue at all, instead Mr. Speaker, he fueled the flames of violence against members of the people's house, against the representatives elected by the American people.

Let me read from a definition of "tar and feathers":

> Pouring molten tar over the body and covering it with feathers was an official punishment in England as early as the 12th century. It was never legal in the United States, but was always a mob—demonstration. The practice finally vanished in the late 19th Century.

But now, Mr. Speaker, a Member of the House wants to resurrect the practice—to drag the American people, not toward the next millennium, but back to the last.

Is this the course the new majorities in the Congress have set? Is this a new contract of tar and feathering, of drawing and quartering, of star chambers and chambers of torture for the American people?

Are there no limits on inciting violence? Has America not seen enough hate in the last few weeks? Will this hate make America stronger?

Mr. Speaker, When the people's representatives remain silent in the face of hate speech, they endorse it. When the people's representatives suggest violent acts against their colleagues, they tear at the very fabric that binds us as a nation. Should we not, as representatives of the people, seek a higher civility in this body? Should we not as leaders of this country, seek to uplift this nation, rather than tear it down?

I ask for this Member's public apology Mr. Speaker. I ask that he apologize to the Member of the other body—that he apologize to the American people—and that he apologize to this institution of which he is a Member.

□ 2230

BLOODY SUNDAY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Alabama [Mr. HILLIARD] is recognized for 5 minutes.

Mr. HILLIARD. Mr. Speaker, today, I rise to discuss what occurred in my congressional district 30 years ago this week. During that time in Selma, AL, a young black man named Jimmy Lee Jackson was murdered because he dared to stand up against the multitudes of racial injustices, from white-only water fountains to the States-rights stand which would not allow blacks to vote.

Fortunately, Jimmy Lee Jackson's murder in 1965 was not in vain. It prompted the historic 54 mile Selma to Montgomery voting rights march, which was the catalyst for the 1965 Voting Rights Act. This act secured the rights of all Americans to participate, without harassment, in the political system.

Today, we again have challenges before us which threaten the basic rights of many Americans. The so-called Republican Contract With America threatens to take away many rights which we, as Americans, hold dear.

I am speaking of the right to have proper medical care, the right to proper nutrition, the right to a good education, and the right to be treated equally and fairly under the law.

Mr. Speaker, I hope and pray that it does not take a murder like Jimmy Lee Jackson's, which occurred over 30 years ago in Selma, to wake up America to action.

DEFENDING DEMOCRACY AGAINST TERRORISM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 1995, the gentleman from New York [Mr. NADLER] is recognized for 45 minutes as the designee of the minority leader.

Mr. NADLER. Mr. Speaker, I rise today in an effort to shed light on a problem on nearly everyone's mind these days—the problem of terrorism—the problem of a relatively small number of violent lawbreakers who have set out to undermine our democratic way of life and seek either to blackmail the government through violence or the threat of violence to comply with their demands, or to overthrow the government entirely.

What these misguided zealots are attempting to do is to create a climate of fear so great that Americans can't even drop off their children at day care in the morning without having to worry if it will be the last time they will ever see them. This climate of violence and fear is sometimes fostered by people who organize or join so-called militias and say they are acting in the name of patriotism. They invoke our Founding Fathers to defend heinous acts of senseless violence, or to advocate such violence.

How ironic! How tragic!

In Hamilton, MT, U.S. District Court Judge Jeff Langton received the following letter:

We are prepared . . . to defend with our life, our Rights to Life, Liberty and the Pursuit of Happiness. We number in the thousands in your area and everywhere else. . . . How many of your agents will be sent home in body bags before you hear the pleas of the people? Proceed at your own peril.

It was signed by the "North American Militia."

In April of this year, in eastern Montana, approximately 15 men, calling themselves "freemen," placed million-dollar bounties on a county judge, a sheriff, a county attorney and on other local officials who they felt were infringing on their rights.

While these particular threats have not yet resulted in violent terrorist acts, they well illustrate the dangers that now confront law-abiding Americans.

We must not give in to the terrorists. We need to enforce the laws we have, and to enact whatever legal authority we need to deal with this domestic terrorist threat. But we must also be ever vigilant not to destroy the very freedoms we are attempting to protect. If we do that, then America loses and the terrorists win.

We have seen some attempts here in Congress to deal with both domestic and international terrorism. Many of these initiatives will bring much needed and appropriate relief. Some threaten the rights of law-abiding citizens. We must be careful not to use a scatter-shot approach, because, as every hunter knows, scatter-shot often strikes innocent bystanders along with, or even instead of, the intended target.

Some proposals, already presented to the Judiciary Committee, would violate such fundamental and sacred protections of our liberties as: the right to a fair and public trial; the right to confront witnesses; the right to be informed of the nature and cause of the accusation; and the right to require that government prove criminal charges beyond a reasonable doubt.

These rights set our Nation apart. They safeguard our freedom. We can defend our families, our communities, and our laws without violating the Constitution, without tearing down the bulwarks of our liberties, and without trampling on the rights of the accused.

I have introduced H.R. 1544, the Domestic Insurgency Act of 1995, which would give our law enforcement officers the legal authority they need to crack down on one major aspect of domestic terrorism—the private armies or militias that have recently proliferated across our land.

This narrowly focused bill would prohibit participating knowingly in private paramilitary activities if it can be demonstrated beyond a reasonable doubt to a jury of twelve Americans that the individual intended to use violence against the United States or any State or for any other illegal purpose.

This bill does not limit the right of free speech or of free assembly or association. People would still be free to express any ideas they choose, no matter how offensive others might find them. It would in no way threaten legal activities such as the Boy Scouts, rod and gun clubs, or people participating in nonviolent citizen activist efforts. It would not affect nonviolent civil disobedience. It would not threaten the right to associate freely with like-minded people. It would penalize only those who have in their hearts the desire to overthrow our legally constituted, democratically elected government and who are bent on taking violent action to do so and who assemble arms and weaponry and practice military techniques for the purpose of doing so. Only the terrorists have any reason to fear this bill.

There are those who do not understand, or who deliberately will not understand, that this bill does not violate the Constitution in any way. They use self-serving, so-called patriotic arguments to justify their opposition.

While vigorous debate is a healthy and necessary part of the democratic process, invoking our Founding Fathers to rationalize terrorism does not promote productive discourse. I want my colleagues and the American people to hear what some have argued.

One American writes: "particularly in jeopardy seem to be habeas corpus, the First, Second and Fourth Amendments and restraints on the Executive Branch."

Another writes on the Internet, "This is an attempt to undermine the Second Amendment by outlawing the concept of 'citizen militia man.'"

Still a third writes,

This final act of unsurpation should be considered by all who love their country, not government, as the Final Straw, and they should prepare themselves for the imposition of a police state to complete the task for denial of our rights granted by G-d. "It is their right, it is their duty to throw off that government" and it appears that, should this bill be passed, duty calls!

A fax sent to my office reads as follows,

Apparently you have never read the Constitution, if you had, you would know that your Bill is not only illegal but treasonous as well. You cannot undo what is a constitutional right (the Second Amendment), except by repeal of the Constitution itself through a Constitutional Convention! How the hell did you get in office as ignorant as you are?

A fair question. Why don't we read the second amendment together?

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

What did the people who wrote the Constitution mean by "a well-regulated Militia"?

Fortunately, the people who wrote these words provided a written explanation for future generations in the Federalist Papers.

In Federalist No. 29, Alexander Hamilton makes clear, "that the plan of the [Constitutional] Convention [which adopted the Second Amendment] proposed to empower the Union 'to provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.'"

Hamilton further explains that, "[i]f a well-regulated militia be the most natural defense of a free country, it ought certainly to be under the regulation and at the disposal of that body which is constituted the guardian of the national security,"—in other words Congress, to which the Constitution grants the power to raise armies.

Therefore, Hamilton points out, "[t]he power of regulating the militia, and of commanding its services in times of insurrection and invasion are natural incidents to the duties of superintending the common defence, and of watching over the internal peace of the Confederacy."

So, clearly, just because a private group of people who arm themselves with the intent to take violent action against our Government or its citizens call themselves a militia, does not make them part of the well-regulated militia referred to in the second amendment. The authors of the Constitution did not see it that way and neither has the Supreme Court.

The Constitution, the Federalist Papers, and Supreme Court precedent all make crystal clear that a well-regulated militia means the auxiliary armed forces of the States that can be called into national service by the President—what we today call the National Guard.

Those who attempt to cloak acts of terrorism or sedition as rights under the mantle of the second amendment ought to reread these crucial passages.

We should all think about what kind of country we want to live in. To be truly patriotic means recognizing our responsibilities to uphold the democratic principles which make this the freest nation on Earth. It is important to remember that the opening words of the Constitution are "We the People" not "I the People." Being a citizen in a democracy means that you can't organize your own private army because you disagree with the actions of the democratically elected government. If you settle political differences with bullets instead of ballots, you don't live in a democracy, you live in Beruit or Bosnia. This is America, and I don't think we want that to happen here.

We have a responsibility—indeed, in a democracy we have a patriotic duty—to speak out against what we believe to be wrong, against that with which we do not agree, and about that which we want to change. Peacefully, lawfully,

democratically, and with respect for the rights and liberties of those with whom we disagree—that's the American way.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. COLLINS of Illinois (at the request of Mr. GEPHARDT), for today and the balance of the week, on account of personal business.

Mr. LEWIS of Kentucky (at the request of Mr. ARMEY), for today, on account of attending a funeral.

Mr. BUNNING of Kentucky (at the request of Mr. ARMEY), for today, on account of attending a funeral.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. PALLONE) to revise and extend their remarks and include extraneous material:)

Mr. OWENS, for 5 minutes, today.

Mr. BECERRA, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Mr. FRANK of Massachusetts, for 5 minutes, today.

Ms. JACKSON-LEE, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. REED, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. RAHALL, for 5 minutes, today.

Mr. MENENDEZ, for 5 minutes, today.

Mr. HILLIARD, for 5 minutes, today.

(The following Members (at the request of Mr. HAYWORTH) to revise and extend their remarks and include extraneous material:)

Mrs. SEASTRAND, for 5 minutes, today.

Mr. HUNTER, for 5 minutes, today.

Mr. BRYANT of Tennessee, for 5 minutes, today.

Ms. ROS-LEHTINEN, for 5 minutes, on May 17.

Mr. FOX of Pennsylvania, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. PALLONE) and to include extraneous matter:)

Mr. ACKERMAN in two instances.

Mr. VISCLOSKY.

Mr. JOHNSON of South Dakota.

Mr. HAMILTON.

Mr. LAFALCE.

Mr. POSHARD.

Ms. HARMAN in three instances.

Mr. MATSUI.

Mr. FOGLIETTA.

Mr. COYNE in two instances.

Mr. CLAY.

Mr. KILDEE.

Ms. KAPTUR.

Mr. MANTON.

Mr. TORRES.

Mr. REED.

Mr. RICHARDSON.

Mr. HALL of Texas.

(The following Members (at the request of Mr. HAYWORTH) and to include extraneous matter:)

Mr. BRYANT of Tennessee.

Mr. FAWELL.

Mr. CAMP.

Mr. COOLEY.

Mrs. ROUKEMA.

Mr. BEREUTER.

Mr. DAVIS in two instances.

Mr. WOLF.

Mr. MARTINI in two instances.

Mr. HYDE.

Mr. RADANOVICH.

Mr. WALKER.

Mrs. JOHNSON of Connecticut.

ADJOURNMENT

Mr. NADLER. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 10 o'clock and 43 minutes p.m.), the House adjourned until tomorrow, Thursday, May 11, 1995, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

844. A letter from the Under Secretary, Department of Defense, transmitting certification with respect to the maneuver control system [MCS] major defense acquisition program, pursuant to 10 U.S.C. 2433(e)(2)(B)(i); to the Committee on National Security.

845. A letter from the Under Secretary, Department of Defense, transmitting certification with respect to ADDS, C-17, and Javelin major defense acquisition programs, pursuant to 10 U.S.C. 2433(e)(2)(B)(i); to the Committee on National Security.

846. A letter from the Under Secretary, Department of Defense, transmitting certification with respect to the M1A2 Abrams upgrade major defense acquisition program, pursuant to 10 U.S.C. 2433(e)(2)(B)(i); to the Committee on National Security.

847. A letter from the Secretary, Department of Defense, transmitting the Department's Future Years Defense Program [FYDP] and associated procurement and RDT&E annexes for the fiscal year 1996-fiscal year 1997 President's budget, pursuant to 10 U.S.C. 221(a); to the Committee on National Security.

848. A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to provide for alternative means of acquiring and improving housing and supporting facilities for the Armed Forces and their families; to the Committee on National Security.

849. A letter from the Secretary, Department of Health and Human Services, transmitting the annual report for fiscal year 1994 of the Administration on Aging, pursuant to 42 U.S.C. 3018; to the Committee on Economic and Educational Opportunities.

850. A letter from the Acting Director, Defense Security Assistance Agency, transmitting the price and availability report for the quarter ending March 31, 1995, pursuant to 22 U.S.C. 2768; to the Committee on International Relations.

851. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report on missile proliferation, pursuant to 22 U.S.C. 2797 note; to the Committee on International Relations.

852. A letter from the Chief Counsel, Foreign Claims Settlement Commission of the United States, transmitting the Commission's 1993 annual report on operations under the War Claims Act of 1948, as amended, pursuant to 50 U.S.C. app. 2008; 22 U.S.C. 1622a; to the Committee on International Relations.

853. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report pursuant to section 1207(c) of the National Defense Authorization Act for fiscal year 1995; to the Committee on International Relations.

854. A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to repeal a provision of the National Defense Authorization Act for fiscal year 1994 that prohibits the United States Government from acquiring or modifying diplomatic or consular facilities in Germany unless done with residual value funds provided by Germany and only after Germany has committed to repay at least 50 percent of the residual value of United States installations returned to Germany; to the Committee on International Relations.

855. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 11-38, "Pennsylvania Avenue Development Area Parks and Plaza Public Safety Amendment Act of 1995," pursuant to D.C. Code, section 1-233(c)(1); to the Committee on Government Reform and Oversight.

856. A letter from the Federal Financial Institutions Examination Council, Appraisal Subcommittee, transmitting the annual report under the Federal Managers' Financial Integrity Act for fiscal year 1994, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Government Reform and Oversight.

857. A letter from the Chairman, Federal Communications Commission, transmitting a report of activities under the Freedom of Information Act for calendar year 1994, pursuant to 5 U.S.C. 552(e); to the Committee on Government Reform and Oversight.

858. A letter from the Secretary, Department of the Interior, transmitting the 1994 section 8 report on national historic and natural landmarks that have been damaged or to which damage to their integrity is anticipated, pursuant to 16 U.S.C. 1a-5(a); to the Committee on Resources.

859. A letter from the Comptroller General, General Accounting Office, transmitting a report entitled, "Military Bases: Analysis of DOD's 1995 Process and Recommendations for Closure and Realignment," pursuant to Public Law 101-576, section 305 (104 Stat. 2853); jointly, to the Committees on National Security and Government Reform and Oversight.

860. A letter from the Comptroller General, General Accounting Office, transmitting the financial audit of the Federal Deposit Insurance Corporation's 1994 and 1993 financial statements, pursuant to Public Law 101-576,

section 305 (104 Stat. 2853); jointly, to the Committees on Banking and Financial Services and Government Reform and Oversight.

861. A letter from the Attorney General of the United States, transmitting the 1994 annual report on the number of applications that were made for orders and extension of orders approving electronic surveillance under the Foreign Intelligence Surveillance Act, pursuant to 50 U.S.C. 1807; jointly, to the Committees on Intelligence (Permanent Select) and the Judiciary.

862. A letter from the Secretary of Energy, transmitting notification that the Department's report on commercial projects employing clean coal technologies in countries projected to have significant growth in greenhouse gas emissions, will be provided by June 15, 1995; jointly, to the Committees on Appropriations, Commerce, and Science.

863. A letter from the Acting Director, Central Intelligence Agency, transmitting a draft of proposed legislation entitled, the "Intelligence Authorization Act for Fiscal Year 1996," pursuant to 31 U.S.C. 1110; jointly, to the Committees on Intelligence (Permanent Select), Government Reform and Oversight, National Security, and the Judiciary.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. WALKER (for himself and Mr. SENSENBRENNER):

H.R. 1601. A bill to authorize appropriations to the National Aeronautics and Space Administration to develop, assemble, and operate the international space station; to the Committee on Science.

By Mr. LONGLEY:

H.R. 1602. A bill to impose a moratorium on sanctions under the Clean Air Act with respect to marginal and moderate ozone nonattainment areas, and for other purposes; to the Committee on Commerce.

H.R. 1603. A bill to amend the Internal Revenue Code of 1986 to correct mistakes which advertently included certain ferries operating between Portland, ME, and Nova Scotia under the excise tax on the transportation of passengers by water as opposed to the actual intent which was to tax voyages the primary purpose of which is gambling; to the Committee on Ways and Means.

By Mrs. JOHNSON of Connecticut (for herself and Mr. THOMAS):

H.R. 1604. A bill to amend the Internal Revenue Code of 1986 to promote the continuity and portability of health insurance coverage by restricting discrimination based on health status, limiting use of preexisting condition exclusions, and making COBRA continuation coverage more affordable and available; to the Committee on Ways and Means.

By Mr. KILDEE (for himself, Mr. CLAY, Mr. WILLIAMS, Mr. MILLER of California, Mr. OWENS, Mr. SAWYER, and Mr. PAYNE of New Jersey):

H.R. 1605. A bill to provide assistance to State and local communities to improve adult education and family literacy, to help achieve the National Education Goals for all citizens, and for other purposes; to the Committee on Economic and Educational Opportunities.

By Mr. REED (for himself and Mr. KENNEDY of Rhode Island):

H.R. 1606. A bill to designate the U.S. Post Office building located at 24 Corliss Street, Providence, RI, as the "Harry Kizirian Post Office Building"; to the Committee on Government Reform and Oversight.

By Mr. ROYCE:

H.R. 1607. A bill to provide for the conveyance of El Toro Marine Corps Air Station, selected for closure under the Defense Base Closure and Realignment Act of 1990, to Orange County, CA; to the Committee on National Security.

By Mr. SCHUMER:

H.R. 1608. A bill to amend title 18, United States Code, to ensure that the prohibitions against guns in school zones have the requisite nexus with interstate or foreign commerce; to the Committee on the Judiciary.

By Ms. WATERS:

H.R. 1609. A bill to amend the Social Security Act and title 38, United States Code, to provide for sharing of medical information relating to determination of disability between the Social Security Administration and Department of Veterans Affairs; to the Committee on Ways and Means, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

MEMORIALS

Under clause 4 of rule XXII, memorials were presented and referred as follows:

76. By the SPEAKER: Memorial of the House of Representatives of the State of Colorado, relative to the Contract With America; to the Committee on Government Reform and Oversight.

77. Also, memorial of the House of Representatives of the State of Colorado, relative to the Federal Aviation Administration Authorization Act of 1994; to the Committee on Transportation and Infrastructure.

78. Also, memorial of the General Assembly of the State of Rhode Island, relative to the Small Business Administration; to the Committee on Small Business.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 42: Mr. DIXON, Mr. GUTIERREZ, Mr. ENGEL, Mr. MEEHAN, Mr. LEWIS of Georgia, Mr. BEILENSON, Mr. JOHNSTON of Florida, and Mr. MANTON.

H.R. 44: Mrs. ROUKEMA, Mr. VENTO, Ms. RIVERS, Mr. EMERSON, Mrs. VUCANOVICH, Mr. RAHALL, Mr. DURBIN, and Mr. PASTOR.

H.R. 94: Mr. BACHUS, Mr. GUNDERSON, Mr. FAWELL, and Mr. DUNCAN.

H.R. 127: Mr. LUTHER and Mr. BEREUTER.

H.R. 230: Mr. COOLEY.

H.R. 311: Mr. EVANS, Mr. OLVER, Ms. WOOLSEY, Ms. LOWEY, Mr. GUNDERSON, and Mr. MEEHAN.

H.R. 329: Mr. CRAPO and Mr. ENGLISH of Pennsylvania.

H.R. 367: Mr. BROWN of California and Mr. STUDDS.

H.R. 398: Mr. GUTIERREZ.

H.R. 399: Mr. JACOBS, Mr. DIXON, Mr. EVANS, Mr. PALLONE, Mr. WARD, and Mr. BISHOP.

H.R. 452: Mr. GENE GREEN of Texas.

H.R. 501: Mr. KINGSTON and Mr. HOSTETTLER.

H.R. 580: Ms. LOWEY, Mrs. THURMAN, Mr. TORRICELLI, and Mrs. ROUKEMA.

H.R. 588: Ms. WOOLSEY and Ms. VELAZQUEZ.

H.R. 739: Mr. BURR and Mr. EWING.

H.R. 764: Ms. NORTON.

H.R. 798: Mr. ACKERMAN, Ms. FURSE, Mr. LIPINSKI, Mrs. ROUKEMA, Mr. PASTOR, Mr. Murtha, and Ms. LOWEY.

H.R. 803: Mr. ROSE, Mr. CAMP, Mrs. KENNELLY, Mr. MEEHAN, Mr. KENNEDY of Massachusetts, and Mr. KLECZKA.

H.R. 833: Mrs. MORELLA and Ms. LOFGREN.

H.R. 860: Mr. STUMP and Mr. COOLEY.

H.R. 896: Mr. PAYNE of Virginia and Mrs. COLLINS of Illinois.

H.R. 897: Mr. FUNDERBURK.

H.R. 957: Mr. BAKER of California and Mr. HERGER.

H.R. 972: Mr. GEJDENSON.

H.R. 1003: Mr. WILSON and Mr. MATSUI.

H.R. 1023: Mr. HUNTER, Mrs. SCHROEDER, Mr. CLINGER, Mr. SANDERS, Mr. MASCARA, and Mr. TORRES.

H.R. 1024: Mr. COBLE.

H.R. 1047: Mr. COX and Mr. MCINNIS.

H.R. 1052: Mr. COOLEY.

H.R. 1061: Mr. NORWOOD, Mr. FUNDERBURK, Mr. MCCOLLUM, Mr. TUCKER, Mr. BONO, Mr. WILSON, Mr. SCHIFF, Mrs. CHENOWETH, Mr. PACKARD, and Mr. GENE GREEN of Texas.

H.R. 1073: Mrs. MEEK of Florida, Mr. CRAMER, Mr. ENGEL, Mr. STOKES, Mr. HOYER, and Mr. EMERSON.

H.R. 1074: Mrs. MEEK of Florida, Mr. CRAMER, Mr. ENGEL, Mr. STOKES, Mr. HOYER, and Mr. EMERSON.

H.R. 1083: Mrs. VUCANOVICH, Mr. COBLE, Mr. FRAZER, Mr. BARTLETT of Maryland, Ms. DUNN of Washington, and Mr. COLLINS of Georgia.

H.R. 1084: Mr. GIBBONS, Mrs. CLAYTON, Mr. DELLUMS, Mr. EVANS, Mr. HINCHEY, Mr. FROST, Mr. THOMPSON, Mr. GENE GREEN of Texas, Mr. SERRANO, and Mr. DURBIN.

H.R. 1176: Mr. KIM.

H.R. 1189: Mr. ZIMMER, Mr. MANTON, and Mr. DEUTSCH.

H.R. 1192: Mr. OBERSTAR, Mr. FROST, Mr. DEUTSCH, Mr. ACKERMAN, Mr. FRANK of Massachusetts, Mr. GENE GREEN of Texas, Mr. MANTON, and Mr. WYDEN.

H.R. 1193: Mr. OBERSTAR, Mr. FROST, Mr. DEUTSCH, Mr. ACKERMAN, Mr. FRANK of Massachusetts, Mr. GENE GREEN of Texas, Mr. TORRICELLI, Mr. MANTON, Mr. SERRANO, Mr. WYDEN, and Mr. MEEHAN.

H.R. 1222: Mr. FOX.

H.R. 1235: Mr. KLUG and Mrs. LOWEY.

H.R. 1242: Mr. Ewing, Mr. DURBIN, Mr. KNOLLENBERG, and Mr. ROBERTS.

H.R. 1253: Mr. SCOTT, Mr. VENTO, Mr. FILNER, Mr. GEJDENSON, Mr. WAXMAN, Ms. SLAUGHTER, Mr. BRYANT of Texas, Mr. SERRANO, Mr. HOYER, Mr. DOOLEY, Mrs. LOWEY, Mr. LEWIS of Georgia, and Mr. LAFALCE.

H.R. 1262: Mr. VENTO, Mr. CARDIN, Mr. SMITH of New Jersey, and Mr. SERRANO.

H.R. 1288: Mr. VISCLOSKY and Mr. JACOBS.

H.R. 1289: Mr. ROMERO-BARCELO, Mrs. FOWLER, and Mr. CRANE.

H.R. 1418: Mr. HEFLEY and Mr. CHAPMAN.

H.R. 1424: Mr. DUNCAN.

H.R. 1447: Mr. MOAKLEY, Mr. BEILENSON, and Mr. FRANK of Massachusetts.

H.R. 1448: Mr. WELDON of Pennsylvania, Mr. MCKEON, and Mr. LONGLEY.

H.R. 1462: Mr. BOUCHER, Mr. JOHNSTON of Florida, and Mr. HINCHEY.

H.R. 1514: Mr. SENSENBRENNER, Mr. RICHARDSON, Mr. QUILLEN, Mr. PAYNE of Virginia, Mr. WOLF, Mr. FUNDERBURK, Mr. SKELTON, Mr. SISISKY, Mr. OBERSTAR, Mr. Tanner, Mr. VOLKMER, Mr. ROSE, Ms. LOFGREN, and Mr. SPENCE.

H.R. 1546: Mr. FRANK of Massachusetts.

H.R. 1560: Ms. PELOSI and Mr. GENE GREEN of Texas.

H.R. 1578: Mr. PASTOR.

H.R. 1589: Mr. HOEKSTRA, Mr. SAXTON, and Mr. MCKEON.

H.R. 1594: Mr. RAMSTAD, Mr. SOLOMON, and Mr. CHRISTENSEN.

H.J. Res. 79: Mr. BONILLA.

H. Con. Res. 36: Mr. ZIMMER.

H. Con Res. 37: Mr. ZIMMER.

H. Con. Res. 40: Mr. HOUGHTON, Mr. ACKERMAN, Ms. MCKINNEY, Mr. JEFFERSON, and Mr. JOHNSTON of Florida.

H. Con. Res. 48: Mr. DEUTSCH, Mr. NEY, Mr. BROWN of Ohio, Mr. LAFALCE, Ms. LOWEY, Mrs. MEYERS of Kansas, Mrs. CLAYTON, and Mr. ACKERMAN.

H. Con. Res. 59: Mr. BROWN of Ohio.

H. Res. 23: Mr. BROWN of Ohio.

H. Res. 24: Mr. MCKEON.

H. Res. 98: Ms. FURSE, Mr. BUNN of Oregon, and Mr. MARTINEZ.

H. Res. 99: Ms. FURSE and Mr. BUNN of Oregon.

AMENDMENTS

Under clause 6 of rule XXIII, proposed amendments were submitted as follows:

H.R. 961

OFFERED BY: MR. BATEMAN

AMENDMENT NO. 57: Pages 231 and 232, strike the table and insert the following:

State	Percentage of Sums Authorized for Fiscal Year			
	1996	1997	1998	1999 & 2000
Alabama	1.0693	1.0110	0.9504	0.8896
Alaska	0.5723	0.5411	0.5087	0.4761
Arizona	0.7139	0.7464	0.7767	0.8060
Arkansas	0.6255	0.5914	0.5560	0.5204
California	7.5590	7.9031	8.2244	8.5345
Colorado	0.7649	0.7232	0.6885	0.6847
Connecticut	1.2948	1.3537	1.3718	1.3643
Delaware	0.4694	0.4438	0.4173	0.3905
District of Columbia	0.4694	0.4438	0.4173	0.3905
Florida	3.4532	3.4462	3.4304	3.4115
Georgia	1.7870	1.8683	1.9443	1.9993
Hawaii	0.7406	0.7002	0.6583	0.6161
Idaho	0.4694	0.4438	0.4173	0.3905
Illinois	4.7801	4.9976	5.2008	5.3970
Indiana	2.5472	2.6631	2.7714	2.8759
Iowa	1.2942	1.2236	1.1503	1.0767
Kansas	0.8708	0.8690	0.8650	0.8602
Kentucky	1.3452	1.3570	1.3508	1.3433
Louisiana	1.0512	1.0060	1.0014	0.9958
Maine	0.7402	0.6999	0.6666	0.6629
Maryland	2.3128	2.1867	2.0557	1.9241
Massachusetts	3.5884	3.7518	3.9043	4.0515
Michigan	4.1117	3.8875	3.8061	3.7850
Minnesota	1.7576	1.6618	1.5622	1.4622
Mississippi	0.8615	0.8146	0.7658	0.7167
Missouri	2.6509	2.5063	2.3562	2.2054
Montana	0.4694	0.4438	0.4173	0.3905
Nebraska	0.4891	0.4624	0.4347	0.4069
Nevada	0.4694	0.4438	0.4173	0.3905
New Hampshire	0.9556	0.9035	0.8494	0.7950
New Jersey	4.3190	4.5156	4.6686	4.6428
New Mexico	0.4694	0.4438	0.4173	0.3905
New York	11.6659	12.1969	12.6928	13.1714
North Carolina	1.9075	1.9943	2.0754	2.1537
North Dakota	0.4694	0.4438	0.4173	0.3905
Ohio	5.3833	5.0898	4.9266	4.8993
Oklahoma	0.7726	0.7304	0.6867	0.6427
Oregon	1.1939	1.2399	1.2342	1.2274
Pennsylvania	4.1866	4.2145	4.1952	4.1720
Rhode Island	0.6421	0.6071	0.5707	0.5342
South Carolina	0.9796	0.9262	0.8707	0.8150
South Dakota	0.4694	0.4438	0.4173	0.3905
Tennessee	1.4697	1.4668	1.4600	1.4520
Texas	4.6552	4.6458	4.6245	4.5989
Utah	0.5039	0.4764	0.4479	0.4192
Vermont	0.4694	0.4438	0.4173	0.3905
Virginia	2.1630	2.2615	2.3534	2.4379
Washington	1.8380	1.9217	1.9998	2.0752
West Virginia	1.4907	1.4249	1.4184	1.4106
Wisconsin	2.5852	2.4442	2.2978	2.1507
Wyoming	0.4694	0.4438	0.4173	0.3905
Puerto Rico	1.2472	1.1792	1.1185	1.1123
Northern Marianas	0.0399	0.0377	0.0355	0.0332
American Somoa	0.0859	0.0812	0.0763	0.0714
Guam	0.0621	0.0587	0.0552	0.0517
Palau	0.1224	0.1158	0.1088	0.1019
Virgin Islands	0.0551	0.0576	0.0599	0.0599."

H.R. 961

OFFERED BY: MR. COOLEY

AMENDMENT NO. 58: Page 181, after line 16, insert the following:

SEC. 401. GRAZING OF LIVESTOCK

Section 401(a)(1) (33 U.S.C. 1341(a)(1)) strike "Federal license or permit" and insert "Federal license or permit (other than a lease or permit to authorize the grazing of livestock on any lands owned or under the control of the United States)".

Redesignate subsequent sections of title IV of the bill and conform the table of contents accordingly.

H.R. 961

OFFERED BY: MR. COOLEY

AMENDMENT NO. 59: Page 209, strike line 1 and insert **"SEC. 503. POINT SOURCE DEFINED.".**

Conform the table of contents of the bill accordingly.

Page 209, at the beginning of line 2, insert "(a) CAFO DEFINITION CLARIFICATION.—".

Page 209, after line 17, insert the following:

(b) AGRICULTURAL STORMWATER DISCHARGES.—Section 502(14) is further amended by inserting ", including discharges from cropland, pasture land, rangeland, any grazing lands used pursuant to a Federal grazing permit or lease, and forest lands," after "agricultural stormwater discharges".

H.R. 961

OFFERED BY: MR. DEFAZIO

AMENDMENT NO. 60: Page 92, line 2, strike "or other facility", as inserted on page 14 of the committee amendment offered by Mr. Shuster.

H.R. 961

OFFERED BY: MR. MINGE

AMENDMENT NO. 61: Page 243, after line 8, insert the following:

"(3) AGRICULTURAL PERMIT AUTHORITY.—The Secretary of Agriculture is authorized to issue permits in accordance with this section for any activity resulting from normal farming, silviculture, aquaculture, and ranching activities and practices carried out on agricultural land or for any activity incidental thereto carried out on the agricultural land if the agricultural land is not subject to sections 1221–1223 of the Food Security Act of 1985 (16 U.S.C. 3821–3823). Any activity allowed by the Secretary of Agriculture under such sections 1221–1223 shall be treated as having a permit issued under this section and no individual request for or granting of a permit shall be required under this section.

Page 274, after line 19, add the following:

"(10) MITIGATION OF AGRICULTURAL LANDS.—Any mitigation approved by the Secretary of Agriculture for agricultural lands shall be accepted by the Secretary as mitigation under this section.

Page 276, line 7, after "ditches" insert "(including resloping of drainage ditches to control bank erosion)".

H.R. 961

OFFERED BY: MR. RIGGS

AMENDMENT NO. 62: On page 276, strike lines 3 through 7 and insert in lieu thereof the following:

"ponds, wastewater retention or management facilities (including pipelines, dikes and berms) that are used by concentrated animal feeding operations or advanced treatment municipal wastewater reuse operations, or irrigation canals and ditches or the maintenance of drainage ditches;".

EXTENSIONS OF REMARKS

REFORMING U.S. INTELLIGENCE

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, May 10, 1995 into the CONGRESSIONAL RECORD.

REFORMING U.S. INTELLIGENCE

Many efforts are currently underway to reform and streamline the federal government. Few parts are better candidates for reform than the multi-billion dollar agencies that make up the intelligence community. With aggressive growth but no master plan for several decades, the intelligence community has become a bloated, poorly-managed bureaucracy whose mission has yet to be redefined for the post-Cold War world.

The Intelligence Community. Intelligence is information on foreign events, intentions, capabilities, and personalities that could affect our security. The Pentagon uses intelligence to design weapons, make deployment decisions, and fight wars. The President and other foreign policy officials use intelligence to prepare for negotiations and predict foreign developments that could threaten U.S. interests.

Thirteen civilian and military agencies—not just the CIA—collect and analyze intelligence. Each of our four military services has its own intelligence unit, and the Pentagon has another. U.S. intelligence agencies employ tens of thousands of people and produce dozens of different daily or weekly reports.

Need for Reform. The U.S. needs an intelligence community that gives government officials information that is accurate, relevant, timely, and cost efficient. To meet that challenge in a world far different from the one for which it was created, the intelligence community will require a new mission and substantial organizational change.

From the end of World War II until the early 1990s, U.S. intelligence had one overriding objective: winning the Cold War. By the end of the Cold War, roughly half of all intelligence resources were focused on Soviet bloc military forces. The world has changed dramatically in the past few years, but the mission of U.S. intelligence has been slow to adjust.

Winning the Cold War was so important an objective that almost any intelligence expenditure could be justified. Intelligence programs and spending grew steadily. The number of CIA employees nearly doubled during the 1980s alone.

Our massive intelligence bureaucracy is not well-coordinated. It is a ship without a captain. Agencies often needlessly cover the same topic, wasting money. Sometimes agencies fail to collaborate effectively. That generates intelligence that is lower in quality and less timely than our national security demands.

What Should Be Done? With the President's backing, John Deutch, the incoming director of the CIA, has promised dramatic reforms in U.S. intelligence. The intelligence community is also being carefully examined by a bipartisan commission established by law last year. Several key reforms are needed.

First, we need to redefine the mission of U.S. intelligence—to decide what we want our intelligence agencies to focus on, and in what order of priority. Nearly everyone agrees that intelligence on weapons proliferation, terrorism, and regional wars should be the highest priority after the Cold War. But some officials also want U.S. intelligence agencies to monitor economic, environmental, and other non-military developments. The lack of consensus has permitted the number of intelligence targets to grow in recent years. That complicates coordination and risks spreading resources too thin.

Second, once we have figured out what our intelligence community needs to focus on, we must decide what combination of agencies and resources it needs to do the job. For example, paramilitary covert action should be assigned to the Department of Defense. To ensure that we get all the intelligence we need at a price we can afford, we should subject the intelligence community to a top-to-bottom management review. We must eliminate redundant programs and improve coordination. In general, the intelligence community should be smaller and more focussed on the central issues of national security.

Third, since effective management will require stronger leadership, we should create a new post, the Director of National Intelligence, with authority over key appointments and the entire intelligence budget, which the head of the CIA now lacks. The Director should be in charge of the intelligence community. Our current management system is a recipe for inefficiency. No one person is in charge of the thirteen intelligence agencies.

Fourth, we need to address the politicization of intelligence. Policy officials sometimes misuse intelligence to promote favored policies, and intelligence officials sometimes tell policy makers what they think they want to hear. President Clinton's decision to make the new CIA director a member of his cabinet threatens the necessary separation between intelligence and policy, and should be reconsidered. The CIA director should not be a policy maker, and should scrupulously keep his assessments free of policy considerations.

Fifth, we need to improve counter-espionage efforts. The case of Aldrich Ames, the convicted CIA agent who spied for Russia without detection for nine years, highlighted stunning weaknesses in our counter-espionage system. Congress has approved legislation that makes it easier to monitor the personal lives and finances of intelligence employees, but additional steps may be necessary.

Finally, I have come to the view that fundamentally the culture of the CIA needs to be changed. Within the intelligence community today is an attitude that they know better than the policymakers—including the President and Congress—about what to do to protect national security. Decisive steps must be taken to ensure that intelligence officials are fully accountable to policymakers. The intelligence community must rigorously respect the law, move toward greater openness, and work closely and cooperatively with Congress.

Conclusion: The U.S. must engage the post-Cold War world with a smaller, better, more cost-efficient intelligence community. The challenges that bedevil us today require that our policymakers have the very best information upon which to make the decisions necessary to preserve the national security of the country.

TRIBUTE TO THE ALMA COLLEGE MODEL UNITED NATIONS TEAM

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. CAMP. Mr. Speaker, I want to recognize the accomplishment of 18 young men and women from Alma College, in the Fourth Congressional District of Michigan.

Every year, the United Nations in New York City sponsors a "Model United Nations Championships" which is a simulation of committee work the U.N. performs. In this competition, students compete in areas such as building and keeping peace, leadership skills, and other issues such as the role of women in national government.

This year, 165 teams, consisting of 1,945 students from 40 States and 18 countries, participated in this 4-day competition. In the end, it was the team from Alma that won it all.

These students worked up to 40 hours a week in preparation for this competition. Their hard work and sacrifice, as well as the efforts of their advisor, Dr. Sandy Hume, resulted in a world championship for Alma College

Their campus, their community, their State and their country have reason to be proud. We can be proud because they set a goal, worked tirelessly to achieve that goal and joined together as a team to accomplish that goal. As far as I'm concerned, they were winners before they ever got to New York.

Congratulations to Dr. Hume and the students of the 1995 Model United Nations World Champions. And here's to sweet repeat in 1996.

HONORING MR. GOULD

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. ACKERMAN. Mr. Speaker, I rise today to join with the constituents of my district in

honoring Mr. Morton Gould, who recently received the 1994 Pulitzer Prize for Music Composition.

The work for which he was honored is "Stringmusic" which was commissioned by the National Symphony Orchestra and first performed by the orchestra here in Washington in March of last year.

The Pulitzer is just the latest honor conferred on Morton. This past December, he was a Kennedy Center honoree for his lifetime contributions to American culture through performing arts.

Born in Richmond Hill, NY, on December 10, 1913, Morton Gould has been composing and performing as conductor of the major symphony orchestras in the United States and throughout the world for most of the 20th century. His first published composition appeared in 1920 when he was just 6 years old.

By the time he was 21, Morton was conducting and arranging a weekly series of orchestra radio programs for the WOR Mutual Network on which many of his orchestral settings were introduced.

A gifted composer, his work is characterized by its distinctively American flavor; it incorporates folk, blues, jazz, gospel, and western elements with the classic symphonic form. Among his more popular symphonic works are "Latin-American Symphonette," "Jekyll and Hyde Variations," "Spirituals for Orchestra," "American Salute," "Tap Dance Concerto," and "Derivations for Clarinet and Band," written for the late Benny Goodman.

In addition to the National Symphony Orchestra, his music has been commissioned by other major symphony orchestras, the Library of Congress, the Chamber Music Society of Lincoln Center, the American Ballet Theatre, and the New York City Ballet.

Morton's talents are not limited to the symphonic mode. His Broadway credits include the musicals "Arms and the Girl" and "Billion Dollar Baby" while his film scores include "Windjammer," "Delightfully Dangerous" and "Cinerama Holiday." His scores composed for television include "Holocaust," "F. Scott Fitzgerald in Hollywood" and CBS's "World War I" documentary series.

His list of credits is virtually endless. At age 81 he lives in Great Neck, NY, where he still is actively composing works which have been commissioned by major orchestras.

It is a pleasure to salute Morton Gould and bring the latest honor bestowed on this true American icon to the attention of our colleagues.

A TRIBUTE TO BETTY McLAUGHLIN, PRESIDENT, DISTRICT 29 VETERANS OF FOREIGN WARS LADIES AUXILIARY

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. COYNE. Mr. Speaker, I want to join today in offering a tribute to Betty McLaughlin, district 29 president for the Veterans of Foreign Wars Ladies Auxiliary. Betty McLaughlin will be honored on May 12, 1995, by the members of district 29 of the VFW Ladies Auxiliary.

It is fitting that the Members of the U.S. House of Representatives should have this opportunity to reflect on the patriotic civic commitment of a woman like Betty McLaughlin. Since joining the ladies auxiliary to the Veterans of Foreign Wars in 1970, Betty McLaughlin has given countless hours of her time in support of VFW activities that celebrate American values of family, community, and country.

Betty McLaughlin originally joined the VFW Ladies Auxiliary on the eligibility of her husband, Bob McLaughlin, who served with the 1st Calvary Division, 7th Calvary Regiment of the U.S. Army during World War II. They married in 1952 and currently reside in West View, PA. She and her husband have four children, Robert Jr., Linda, Robin, and Sean. They are also the proud grandparents of six grandchildren.

Betty McLaughlin has served in a number of leadership posts over the years since first joining the VFW's Ladies Auxiliary. She was elected president of the West View Auxiliary in 1973 when her husband Bob served as commander. They were the first husband and wife team to serve together as president and commander at the West View Post. During her first term as president of the West View Post, Betty McLaughlin was honored for her success at recruiting new members. She has been chairman of several committees, including Americanism and Loyalty Day Safety, Community Activities, and Cancer. She is currently serving as committee chairman for Cancer, and Americanism and Loyalty Day as well as trustee.

Betty McLaughlin's first appointment on the Allegheny County Council level was as a color bearer. After serving on many committees at the county council level, she was elected to the office of president of the Allegheny Council Ladies Auxiliary in June 1982. Betty McLaughlin was appointed department of Pennsylvania chief of staff by department president-elect Jean Gasior in 1990 and has held several State chairmanships, such as 1991 chairman of the Pennsylvania Western Area Chairman for National Home, the 1992 department of Pennsylvania chairman for Political Action Committee, and the 1993 Department of Pennsylvania western area chairman for Americanism and Loyalty Day.

While deeply involved with the VFW Ladies Auxiliary, Betty McLaughlin has also been active in her community and has given her time and energy to programs sponsored by local groups, churches, and schools. She has served as den mother, Brownie, and Girl Scout Mother. She is currently serving as advisor to the West View Junior Girls Unit. She has also served the last 6 years on the election board in her local community.

Mr. Speaker, in 1994, Betty McLaughlin attained the office of district 29 president of the Veterans of Foreign Wars Ladies Auxiliary. She has brought to this position the same dedication and spirit that she has demonstrated in so many positions since joining the VFW Ladies Auxiliary in 1970. I am proud to represent Betty McLaughlin as a constituent of the 14th Congressional District of Pennsylvania and I want to wish her and her family the very best. It is a distinct pleasure to join with the comrades and sisters of the West View Veterans of Foreign Wars Post 2754 and its auxiliary and junior girls in saluting Betty McLaughlin.

AMERICA AS EXPORT SUPERPOWER

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Ms. HARMAN. Mr. Speaker, the aftermath of the cold war presents America with a wide range of opportunities as well as challenges to its pre-eminent position in world commerce. To many, the source of our success provides comfort in the fact of these challenges. And, indeed, the skills and technology which created the military might by which we won the cold war afford us one means for shaping our future response.

But skills and technology alone are not enough. We must do more. We must carefully assess the international environment and understand more fully the nature of our competition abroad. Thus, while the United States is poised to build upon its superiority in world commerce, there are some questions which are part of our public debate which remain to be answered. Among them are the evolving relationship between government and business, industry's relative strengths and weaknesses, and how we can open markets currently closed to U.S. investment and products.

The answers to these questions are not easy ones. But a recent speech by my friend Michael Armstrong concisely presents some possibilities worthy of further discussion. Mike is the chairman and CEO of Hughes Electronics, a company highly successful because of its clear understanding of the international environment. I commend to my colleagues his remarks on making America an export superpower.

AMERICA AS EXPORT SUPERPOWER: REASSESSING GOVERNMENT'S ROLE IN ECONOMIC GROWTH

(By C. Michael Armstrong)

It is a tremendous honor to follow the long line of distinguished speakers to this podium. Since its founding in the wake of World War I, the Council on Foreign Relations has been at the very center of the public debate on America's place in the world—a forum for ideas, and a fulcrum for change.

I want to underscore right at the onset, that while I am privileged to serve as Chairman of the President's Export Council—and while my visits to Washington have been more frequent—I can still say, at this point, that the views I express today are my own.

TRANSITIONS: 1945–1995

I think all of us were moved by the celebrations—the commemoration—of V-E Day. That journey back to May 1945 to the beginning of a post-war era that was prelude to the long Cold War no one could yet foresee—has undeniable parallels to our present. Today, we are once again making a difficult

crossing—ending one era and entering the next: A new world, with new rules for the way nations cooperate—for the way nations compete.

As the historians in the audience today know better than I, the outlines of our era are only now becoming clear. Just as American GIs shook hands with Ivan at Torgau on the Elbe in 1945—only to find an implacable Soviet Union blockading Berlin in 1948—periods of transition unfold in unpredictable ways.

The distance from 1995 back to the fall of the Berlin Wall or the implosion of the Soviet Union may seem significant—but in the handful of years since those events, we are only now beginning to seize the opportunities—to shape a future—beyond the Cold War's long shadow.

Already we see more clearly that with the passing of the Cold WAr, the coming competition will be less military than economic: Dominion will be defined by the development of new technologies and economic performance. I am convinced: If the measure of our Cold War strength was military—America's destiny in the remainder of the century is as an Export Superpower.

As the first generation after the Cold War—we have an opportunity that is also an obligation. History will judge what happens on our watch.

If we are to sustain our role of global leadership and expand our country's economic well-being, it will only happen if America is the export superpower of the world.

And there are signs we are on track:

We've just passed Japan and Germany to regain the top spot as the world's largest exporter—12.8% of all global trade, compared to 10.5% for Germany and 9.9% for Japan.

U.S. exports, according to the latest Department of Commerce estimates, are projected at double-digit growth—up from a still-impressive 5 to 7% as recently as one year ago.

Broad, bipartisan leadership has passed NAFTA and now GATT, opening the way to expanded trade opportunities that will boost GDP and job creation.

So with all this good news—what's the problem? Why are some of us more concerned than confident?

Because the positive signs I've just mentioned coexist with a more worrisome record: A record that points to a far different future—to a competitive implosion so fundamental it could amount to gradual economic disarmament.

We've got to ask:

Does a decade-long trade deficit of $1.1 trillion dollars define an export superpower?

Does a 10-year, $2.1 trillion federal budget deficit—a budget that hasn't been balanced since 1969—define an economic superpower?

Does an education "deficit" that produces students that rank consistently in last place among industrialized nations portend a leader of the societies of this world?

We've had a good run at economic success for 50 years, but I happen to believe that we succeeded so well economically after World War II also because of some fundamentals:

First, we won the war without internal economic destruction. As a result, we quickly re-tooled our war economy and dominated global commerce.

Second, we firmly established the world's foremost public education system including a GI bill that opened the door of opportunity to millions throughout our society.

And third, we let the market system sort through our problems which gave an adaptive America room to restructure to compete.

But is the market system alone enough to deliver America's economic destiny? Just what should the government's role be to enable our businesses to compete globally; to enable our people to enjoy a standard of living second to none; to enable our nation to preserve where history has witnessed the demise of others.

TECHNOLOGY V. BUREAUCRACY

To answer this, we must recognize two new realities that are currently transforming our world: First, with the fall of the Berlin Wall and the Soviet Union, we are witnessing the fall of economic, social and cultural borders as well. There is an unmistakable, irreversible trend toward open markets—to the reality and the bounty of a global village.

Second, the phenomenon that defines our age—the speed of technology in bringing new products, new capabilities, new markets, new lifestyles and new economics. In contrast to the past, where either government or mega-corporations defined markets, today the contest pits the speed of technology versus the speed of bureaucracy—or, more precisely, the lack of it, as the information age makes a mockery of borders and barriers of all kinds.

It is in this context that we should ask, "How much Government do we need?"

I believe the answer is simply, just enough.

Just enough: No more—and no less government than we need to sustain a globally competitive society.

Enough government means getting the right government where we need it—and getting rid of it where we don't.

While the premise of "just enough" is hard to dispute, the devil is in the details. Thus, I would propose we answer two questions with each policy and factor-in our quest for exports:

What government must do.

What governments should not do.

COMPETITIVENESS, EXPORTS AND ECONOMIC GROWTH

As we explore this question of government's role in America's export competitiveness, I want to be clear that our country's economic responsibility makes demands of the private sector as well as public policy.

While business cannot overcome a government that shackles it with a bureacractic ball and chain, nothing government can do—no policy/no practice/no politics—will spark our economic engine if American business is not competitive.

There is sometimes a certain "no-fault" mentality that's crept into American management. The antidote is accountability.

The ancient Romans had a tradition: Whenever one of their engineers constructed an arch—as the capstone was hoisted into place, the engineer assumed accountability for his work in the most profound way possible:

He stood under the arch.

If his construction was shoddy—he would be the first to know.

With out market systems, American management must, at the end, stand under the arch.

And we've had our share of fallen arches. Historically, the companies that did not respond to the international challenge are the companies that did not reap the rewards. Look back at the list of companies at the top of the first-ever Fortune 500, compiled back in 1955: Of the Top 50—⅓ have dropped off the list/another ⅓ have merged—only ⅓ are still going strong. Whatever their industry, the companies that have kept their place all share one common trait. They took their American business international—conquering new markets to create new growth.

Now look ahead—to the export opportunities we enjoy: Over the next two decades, 12 countries with a combined population of 2.7 billion—more than ten times the population of the United States—are expected to account for 40 percent of all export opportunities. For countries as well as individual companies, there's a world out their hungry for the goods and services we provide.

The question is whether American industry is up the challenge. Many of you know the studies by the Council on Competitiveness of U.S. industry's strengths and weaknesses in 94 critical, cutting-edge technologies. The most recent review showed some positive movement—but also distressing evidence of the distance we've got to go to make our positions more competitive.

While the U.S. has improved its position in 22 categories—a closer look reveals the sobering part of the story. In 11 of those 22 areas we moved from the last category—"losing badly or lost"—to "weak." In the other 11, we moved from "weak" to "competitive." In not one case—not one—did we move from competitive to strong.

Now, getting off the critical list is welcome news for anyone—but finding out the patient has a pulse isn't the same as watching him hop out of bed and run a marathon.

WHAT GOVERNMENT CAN DO

My promise is thus quite straightforward, if we are to be an export superpower, it takes both a competitive commercial base and a competitive government system. For the most part, over time, our market system should define and produce a competitive commercial base. But it is up to all of us to define the role of government in our pursuit of exports.

To begin, I'd suggest what government must do.

First, while we may need a balanced budget to discipline our politicians, what we need for export growth is a balanced economy.

We need a reasonable balance between our country's investment accounts and its "care and feeding" accounts. Undisciplined deficits and a disabled dollar are critical challenges government must address.

We need competitive and well educated graduates coming out of our schools if we are going to have competitive products to export. It is not enough to delegate such a national policy to thousands of individual communities to solve alone. A national consensus should be followed by a thoughful results-based education strategy.

We need a political balance in our system of government that is both principled and practical—that is responsive, committed and gets things done. If we elect people to spend their time serving society, we are out of balance if they spend half their time running for re-election. Whether it takes the form of campaign reform or term limits—a better balance must be struck.

Second, government must act to open markets for our exports and our investment.

The passage of NAFTA and GATT will serve trade expansion well—and the passage of these landmark agreements was surely a signal from both ends of Pennsylvania Avenue that America's destiny is tied to trade.

However, we need to build on those successes, and open the markets of the second largest commercial nation in the world. We should all support the difficult negotiations now underway with Japan. It will never be

easy; it will take understanding and trust on both sides; but it must be done now. Hopefully, if sanctions are required, they will limit Japan and not just layoff Americans.

We need to sustain our support for Mexico, our third largest export market. It is not politics; it is not Federal Aid; it is not a give-away to banking interests; it is simply in our economic self-interest.

We need to ensure market access to U.S. consumer goods—taking aim at restrictive standards designed to keep foreign goods out and protect domestic producers.

We need effective, strategic negotiating authority in government to respond, act and conclude. Fast-track negotiating authority is not an option—it is a necessity—if we really want to open markets.

And while we drive to open markets, we should concurrently demand that respect for intellectual property rights must be a condition of access to our market.

Third, in addition to opening markets, all of our government must act as an export advocate. While we now have a sensible and thoughtful National Export Strategy, we need support and follow-through in the marketplace. It is terrific to see Commerce, Defense, Transportation, Energy and Ambassadors around the world, not only stating their support, but engaging to help make things happen. But we need more advocacy; more agency coordination and consolidation; more leadership in the markets, not just at the podium.

However, I've heard proposals to reorganize the U.S. Foreign and Commercial Services—newly named the Commercial Service—a network of offices across the country and in our embassies whose clientele is American companies trying to break export barriers and win business. This is an area where our present policy makes sense—change would be a mistake. It ain't broke—so don't fix it.

Fourth, at times, government must act as an export financier. This is not a disguised form of foreign aid. This is a market necessity for large and small American businesses to compete abroad and create jobs at home.

There are many instances where businesses and banks with their balance sheets should fear to tread. Where the risk, the venture, or the competition dictates that the appropriate role of government is as guarantor.

There is a critical roll for established institutions like the Export-Import Bank. Ex-Im can help broker blockbuster deals—like the recent $500 million package for Indonesia's first-ever private-sector power project. Without Ex-Im's political risk coverage, projects like this one would not go forward—and the loss wouldn't just be Indonesia's because, in this case, the project will provide 7000 new American jobs.

And the benefits of export financing and export advocacy should flow so that small businesses can become powerhouses in the export game. There is no reason the small firms in the industrial park down the street can't export to markets around the globe. It ought to be possible in America to be an export entrepreneur.

Fifth, we must recognize that long-term export expansion and technology leadership are synonymous. To assure direction and application, we should enact a permanent R&D tax credit. However, I would add that irrespective of an R&D tax credit, businesses should be investing in R&D to satisfy their futures and stay ahead of their competitors. But tax policy in this country has often helped to shape our republic and assure our future. A permanent R&D tax policy today could help to do just that.

And sixth, we need U.S. export policy that addresses a globally competitive marketplace, not policies rooted in the Cold War, fashioned to contain communism rather than expand peace and prosperity. We should have an Export Administration Act that minimizes licensing requirements; that implements, where needed, a licensing process that is fast, fair and responsive; that places commodity jurisdiction within the government where it belongs—based on today's technology and markets; and a Munitions List that is rational to the realities of technology as well as the needs of national security.

Anything less constitutes a weakness of American competitiveness—anything less consigns our industry to a kind of bureaucratic Berlin Wall blocking American exports.

I disagree with the school of thought that suggests a strong export strategy equals a weak foreign policy. In fact, the truth is just the opposite: Strong exports mean more leverage—more options, more choice in our foreign policy.

In our current foreign policy, we seem to think technology can be quarantined by bureaucracy. The fact is: Technology travels. One nation's export ban is another nation's economic boon: An invitation to win trade opportunities while competitor companies are kept in the penalty box.

On this last point, an outdated Munitions List too often teaches the right lesson to the wrong people.

Last month, it was a businessman stopped at Customs for carrying a telephone on a foreign trip. The phone was equipped with a security scrambler—a technology on the Munitions List.

And that made the telephone a dangerous weapon—right along with ballistic missiles and nuclear warheads. Meanwhile, any foreign national can walk into an American computer store, buy the same encryption software that makes the phone secure—and take it out of the country. And even that is a waste of a plane ticket—because anyone on the internet can e-mail the program, anywhere in the world. You can even print the computer code on a mailing label and send it abroad—for the price of a postage stamp.

In fact, there's only one way you can't carry or sell that software abroad—and that's if you're an American citizen.

While the government is busy managing exports based on yesterday's threats and technology, the 1995 Cadillac now has more computing power under its hood than the original guidance system that landed the Apollo space capsule on the moon.

The examples are legion:

In the 1970s the average interval between taking a computer from the drawing board to the market was 7 years.

Today, in some cases, a new generation comes along every 12–18 months.

70% of American computer products have a shelf-life of less than 18 months.

Some of the fastest growing foreign markets—some expanding as much as 7 to 10% per year—are among the 50 to 60 countries designated as "sensitive" on the Munitions List.

That's one-third of all the countries in the world—fenced from U.S. high-tech goods and services.

We've got to recognize the inherent tension between the speed of technology and the speed of bureaucracy: Government policies that slow non-threatening technology will cost this country its competitive position in the marketplace.

I am encouraged that secretaries Christopher and Brown have pledged their support to work with each other, and the Congress, for the passage of an effective Export Administration Act this year.

Each of the issues I've identified argue for what is just enough government.

While 19 agencies may be too many to achieve a coherent trade policy . . .

While the finance function government performs may be fine-tuned . . .

While government's role in advocating U.S. exports may be activist in a number of ways . . .

We cannot lose sight of the positive role government must play in promoting our economy's export engine. To do anything less would be to abandon our destiny as an Export Superpower—and put ourselves on the path to economic disarmaments.

If these are the areas where we need the right kind of government to support export expansion, there are also areas where we need government to change or get out of the way.

The most difficult policy that needs to be addressed is also one of the most economically damaging policies of our government. I'm speaking of the use of unilateral economic sanctions. Generally speaking, history has judged unilateral economic sanctions as an unsuccessful policy to change errant behavior. Only if unilateral sanctions are a means of leadership to bring about multilateral sanctions, are the chances of success able to justify the cost at home.

That's not the case when we take a go-it-alone approach to sanctions. I would cite two examples.

In August of 1993, the State Department invoked unilateral economic sanctions against China for violations of the MTCR. This was due to alleged shipments in 1992 by China of M-11 missile parts to Pakistan. The State Department chose to extend interpretation of the Munitions List to embedded technology. Based on this interpretation, it then forbade the export or launch of commercial communications satellites.

As a result:

Australia and Hong Kong could not launch their Hughes satellites—satellites that would primarily be carrying home TV, much of it American programming.

The Chinese canceled their orders with Hughes for 2 satellites, mainly to be used for tying their banking system together. This was a $400 million order worth hundreds of American jobs.

Then, after Chancellor Kohl visited China and pointed out the differences between American and German policy, China canceled a joint agreement to build 10 sat ellites—and transferred this multi-billion dollar agreement to Deutsch Aerospace. Thousands more jobs were lost.

The sanctions did little to hurt China—but they certainly registered in California, creating a new wave of unemployment potential among people already dealing with difficult times.

Now, there are times when government gets it right. When the issue was piracy of intellectual property rights involving American-made movies and other software, the U.S. threatened the Chinese government—and it paid off, with quick and conspicuous results. We taught the right lesson to the right people.

The tragedy is that if there was some process, some required involvement with affected industry, its possible sanctions could be implemented without sustaining such large self-inflicted wounds.

Presently the U.S. has just invoked broad unilateral sanctions against Iran. There is no question in my mind—and no lessons we can look to—that suggests sanctions will change the behavior of Iran—unless they are multilateral. The purpose of sanctions cannot simply be to feel politically justified. The purpose, of course, must be to change errant behavior.

In imposing unilateral sanctions, this step by the United States should be our calling card for them to join us. If this is not the charge to the State Department, then the outcome will merely be a shift in the flow of commerce, a few thousand fewer jobs in America, and more important, no change in Iran's behavior.

To learn from the lessons over time of unilateral economic sanctions, I strongly urge the Administration to put in place a process to involve industries affected and a policy that recognizes that multilateral sanctions, and "reverse" sanctions on the offending country are the only effective means to achieve our security objectives.

Yes, Ladies and Gentlemen, the end of a century is like a hinge in history: A time to look to at the past—and always a time to complete the unfinished work of the future. The steps we take in the final five years of this century could well spell our destiny in the next.

Failure to understand the public and private economic imperatives of export expansion, will put us on a slow but sure spiral into economic disarmament: Will earn us a page in history offering a painful lesson in decline—a lesson made more bleak because our prospects were so bright.

Success—traveling the path that leads to our destiny as an Export Superpower—will bring a standard of living and a level of security the likes of which earlier generations could never have dreamed possible.

To realize that future: We must all pay attention . . .

And America must act.

Thank you.

TRIBUTE TO ELFEGO BACA

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. RICHARDSON. Mr. Speaker, many of us have spoken at great length about the cowards responsible for the bombing of the Federal building in Oklahoma City. With all this talk about cowards, I thought it might be helpful to remind my colleagues that while our country is plagued with cowards from time to time, we have a rich history of heros and famous sons and daughters. One such famous son is Elfego Baca who to this day—more than 110 years after his remarkable feat in New Mexico—is still remembered fondly by New Mexicans.

An encounter between Elfego Baca and some Texas cowboys in the fall of 1884 has to many in the New Mexico Hispanic community resulted in the elevation of Baca to heroic status.

Elfego Baca was born the youngest child to a family of Spanish ancestry in 1865. During his youth, he held a job as a clerk in a merchant's store in Socorro County, NM. Several years later in 1883, Baca experienced his first introduction to the legal side of law enforcement.

Socorro County was undergoing rapid economic growth with the development of the Santa Fe Railroad. This expansion brought new faces to the area—laborers, miners, and ranchers to name a few. Many of the Texan newcomers held the local native community in low esteem. These cattlemen would often ride inebriated through town while shooting their guns. Obviously this posed a dangerous problem to the safety of the community so Sheriff Simpson called on Baca to help chase the cowboys out of town. Consequently, Elfego was appointed deputy sheriff for Socorro County.

It is still a mystery why Baca travelled to San Francisco Plaza in October 1884, but his confrontation with some Texas cowboys is what made him a legend. Shortly after arriving, deputy Baca encountered Charles McCarthy who was firing his pistol in a local saloon. Baca quickly took control and brought McCarthy to the justice of peace. McCarthy paid a fine and was released, but again repeated his lawless actions and was again arrested by Baca. McCarthy had fired his gun directly at Baca, so the deputy decided to guard the drunk prisoner in a private house in town. This enraged the other Texas cowboys and created an enormously tense scenario between them and deputy Baca. That night, a mob of stockmen threatened Baca for the release of McCarthy, but the deputy declined and held off their advances. It finally came to a head when Baca fired shots to disperse the mob and shot a horse which one of the cowboy's was riding, pinning the rider and crushing him to death.

The cattlemen used the following day to muster up their forces in retaliation of their comrade's death. Baca meanwhile hid in a small shack just outside town. When the cowboys finally tried to storm the house, Baca fired at the intruders, hitting one man in the chest and killing him. The infuriated gang of Texas cowboys that had congregated outside returned fire at the house but were unable to dislodge Baca from his fortification.

Finally after nearly a day of hiding out, the justice of peace issued an arrest warrant for Deputy Sheriff Baca. Baca surrendered under the condition that his life be spared from the cowboy mob and that he receive a fair trial in Bernalillo County with an Hispanic jury. Baca was acquitted under the grounds of self-defense.

The story of Elfego Baca demonstrates a man's will to preserve justice in a land and time of rampant corruption and bullying. Baca's bravery instilled hope to the native New Mexican people who upheld the laws of the land and refused to succumb to racial injustices.

I urge my colleagues to join me in paying special tribute to Elfego Baca and the countless numbers of other American heros and famous sons and daughters who have helped make this country great.

TRIBUTE TO THE BERNIE V. GUTHRIE SQUADRON

HON. TIM JOHNSON

OF SOUTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. JOHNSON of South Dakota. Mr. Speaker, I rise today to honor the Bernie V. Guthrie Squadron, a charter member of the Arnold Air Society, located on the campus of South Dakota State University in Brookings, SD. The Guthrie Squadron was established in 1951, and named in honor of Capt. Bernie V. Guthrie, an Air Force pilot who was shot down over Hamm, Germany during World War II.

Since its establishment, the Bernie V. Guthrie Squadron has had an outstanding record of accomplishment and community service. The squadron instituted an annual veterans vigil, which began as a local project in the late 1980's and was expanded into a permanent nationwide project in 1991. In addition, the Guthrie Squadron sold POW/MIA bracelets at South Dakota State University to increase student awareness of POW/MIA issues, and instituted a POW/MIA name tracing project which included all area squadrons.

The Guthrie Squadron has also served the community and the State by organizing blood drives, participating in the Big Brother/Big Sister Program, and working with handicapped children and adults. It has received numerous honors, including the Outstanding Squadron of 1992, the Outstanding State Service Award, and the Jaycees Community Service Award.

I ask my colleagues to join me today in recognizing the achievements of the Bernie V. Guthrie Squadron, and to encourage the squadron to continue its long and proud tradition of service in South Dakota.

HONORING THE CROATIAN FRATERNAL UNION

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. VISCLOSKY. Mr. Speaker, it is my distinct honor to congratulate the Croatian Sons Lodge No. 170 of the Croatian Fraternal Union on the festive occasion of its 87th anniversary and 50-year-member banquet.

This year, the Croatian Fraternal Union will hold this gala event at the beautifully renovated Croatian Center in Merrillville, IN. Traditionally, the anniversary ceremony includes a recognition of those members who have achieved 50 years of membership. Honorees who have pledged their allegiance include: Vincent Brebrich, Bessie Briski, Marko Buncich, Edward Carija, John William Carr, Vera Depa, Julia Farrenkopf, Rose Marie Franz, Helen Griffin, Peter Hecimovich, Mildred Kennedy, Helen Lucas, John Meznarick, Lubi Paligraf, Steve Paulich, Violet Plummer, Delores Roppolo, John Simunic, Frank Sostaric, Ann Stankovic, Marie Vucich, Anna Wilson, and Peter Yukich.

These loyal and dedicated individuals share this prestigious honor with a total of 256 additional lodge members who have attained this status.

This memorable day begins with Mass at St. Joseph the Worker Catholic Church in Gary, IN, officiated by the Reverend Father Benedict Benakovich. Croatian Fraternal Union national president, Bernard Luketich, will be this year's distinguished guest speaker. Festivities will be enriched by the music of the Croatian Glee Club, "Preradovic," directed by Brother Dennis Barunica and by the Hoosier Hrvati Adult Tamburitza Orchestra, directed by Ed Sindicih. In addition, the Croatian Junior Tamburitzans will perform under the direction of Dennis Barunica.

I am proud to commend lodge president, Elizabeth Morgavan, as well as every member of the Croatian Fraternal Union Lodge No. 170, for their loyalty and radiant display of passion for their ethnicity. It is my hope that this year will bring renewed hope and prosperity for all members of the Croatian community and their families.

CONGRATULATIONS ADAMSVILLE HIGH SCHOOL

HON. ED BRYANT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. BRYANT of Tennessee. Mr. Speaker, I rise today to congratulate the Adamsville High School Cardinals for the outstanding 1994–95 basketball season they enjoyed.

It gives me great pleasure to pay tribute to one of the outstanding high schools in the State of Tennessee, and at this time, to specially recognize their runner-up status in the Tennessee State Basketball Tournament in Mufreesboro, TN.

Head Coach Greg Martin, in his first year in that capacity, directed the team, with the able assistance of Assistant Coach Rick Coffman. Coach Martin won the District 15A Coach of the Year Award for his outstanding effort.

At a time when some question the commitment and work ethic of our youth, those 15 young men dispelled that myth with their team efforts. Led by All-State Tournament Team member Matt Hoover, the Cardinals also included Michael Cleary, Tony Engle, Jon Luna, Casey Meek, B.J. Sherron, Chad Wyatt, Tracy Carter, Nick Ernest, John Hoover, Luke Rogers, Dexter Chambers, John Massey, Steven Moore, and George Root.

Also to be commended for this outstanding year are the school principal, Mark Massey; athletic director, Fred Carroll; and cheerleaders Christy Carroll, Stephanie Gibbs, Dana James, Brook Garner, Keesha Bromley, and Tracey Harris.

Mr. Speaker, I would ask that all members join me in paying tribute to the Adamsville High School basketball team as it celebrates another outstanding season and such fine leadership and all-around young men.

H.R. 1601; THE INTERNATIONAL SPACE STATION AUTHORIZATION ACT OF 1995

HON. ROBERT S. WALKER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. WALKER. Mr. Speaker, today I am introducing H.R. 1601, The International Space Station Authorization Act of 1995. Mr. Speaker, this legislation will firmly establish America's fundamental commitment to human spaceflight for decades to come by committing the Congress to finish the international Space Station on time and on budget.

How often in the past 5 years has this House devoted its precious time and conducted purposeful debates on the fate of the Space Station, only to conclude each time to continue building it? Mr. Speaker, the House has consistently voted to support Space Station's development every time since it was proposed in 1984—under Republican and Democratic Presidents, through four significant redesign efforts, and under equally distressing fiscal circumstances.

In November, the American people voted for change in the way Congress does business. Surely the American people want Congress to stop wasting money on programs and subsidies they can neither see nor understand. But I believe the succession of votes the House has taken over 10 years to build the Space Station demonstrates the consternation over building it, lays only with some Members of the House, and not with the American people.

This legislation, to commit the Nation to finish what it has started, is a new way of doing business. It represents a change in the way Congress does business because it says, "here is our highest space priority, and we're going to finish it." Passage of a full-program authorization for the Space Station will be a breath of fresh air to those who have watched in amazement while successive Congresses have revisited, revised, and reinvented the Space Station year after year.

Mr. Speaker, the American people aren't among those who "know the price of everything and the value of nothing." Human space exploration is an adventure that affects us all in big and small ways. Space is and has always been an integral part of our science, our popular culture, and our science fiction. Americans are committed to a future for themselves and their children that includes space travel. So it is with a sense of triumph for that pioneer spirit that I am proud to introduce this legislation today, setting our priorities to make certain a future in space for this Nation.

The mechanics of this legislation to fully authorize the Space Station are simple. It gives the National Aeronautics and Space Administration the authority to proceed on its current, baseline Space Station development plan, extending from fiscal year 1996 through fiscal year 2002—for a total of $13,141,000,000, not to exceed $2,121,000,000 in any one fiscal year. The authorization is conditioned upon each year's success, meaning that NASA must stay on budget and on time for the legislation to remain effective.

As you can imagine, the best of all worlds would be to fully appropriate these funds in a full-program appropriation to mirror this legislation. We hope this can be done. This legislation is the first step towards the goal of achieving discipline and stability in the Space Station program.

By setting these norms and requirements in law—today we are still only working from NASA's word to the Congress—and making a contract with NASA for completion, I am convinced Congress and the American people will save money. The on-again, off-again nature of making space station budgets has increased the cost of the space station from $8 billion, as proposed in 1984, to $30 billion before the final redesign of the project last year. Most of that nearly 4-to-1 cost growth can be attributed to redesigns and fiscal stretch-outs called for by actions taken by the Congress.

Today, the space station will cost $13,141,000,000 to complete and begin operations, between fiscal years 1996 through 2002. This is a significant savings over earlier designs and projections. The redesign of 1993 was a redesign aimed at cost reduction, not cost stretch-out, while at the same time limiting the annual total to $2.1 billion.

Mr. Speaker, I believe we have seen enough of no good deeds go unpunished. NASA has succeeded in arriving at a design-to-cost space station that America can afford and in which that all nations can fully participate. Shall we reward NASA's success in this effort by redesigning the program again? If I were not convinced that this was the best space station attainable under the constraints we have given NASA and given ourselves, Mr. Speaker, I would not be able to offer this legislation today.

I would like to stress to my colleagues the compelling need for such a full-program authorization at this time.

First, let us agree there is no cheaper program for building a space station than this one. NASA looked in depth at three radically different redesign proposals and chose this approach in consultation with President Clinton. This is the bare bones space station Congress has been searching for, and it has been achieved with minimal sacrifices in capability. In fact, I am happy to report that the current design will offer more laboratory space and more power than any of the previous designs. But this is not a design that can be trimmed without radical restructure, and that is why the legislation requires a full program authorization. If we are to avoid wasting another nickel, a full program authorized to completion is necessary now.

Second, but also related to cost, is facing the question of human space development. Failing to complete this space station within the safe operational life of the space shuttle will constrain America to a humanless space program. I submit we are always at a critical juncture when it comes to keeping people in space. The human space program is expensive, always has been, and always will be, until it becomes a normal part of everyday life. Yet, if raiding the space station program as though it were the cash cow to fund other programs within NASA, or elsewhere in the Federal budget, is something Congress wants to

do, it must be made aware of the consequence: America will abandon flying people in space except on Russian space systems. If we raid the space station budget, it will cause delays that I fear will extend beyond the space shuttle's planned operational life.

Another situation that requires us to act is the international nature of our partnership. We are committed by this design to cooperate in depth with the Russian space program, and that means we must be good partners not just do-gooders. It is of particular importance to them, to Europe, Japan, and to Canada, that Congress show it has chosen to move forward—not just for another year, but until the job is done. No other government in the solar system undertakes to build something of this scope and scale on a year-to-year basis. A full-program authorization will help focus the attention of the international partnership on those questions that affect the station's operations.

Finally, and this is profound in the context of today's budget battles, President Clinton chose the Space Station project alone to be spared from NASA's other budget cuts. That's right, Mr. Speaker, the President's tax-cut will not be funded by killing off America's future in space. This is important news, since the President's budget proposes significant cuts to NASA in general, but exempts the Space Station in particular. I believe the President has told Congress what I am saying here: Space Station is the highest national priority in space today and we must finish the job.

In conclusion, Mr. Speaker, I urge my colleagues in both parties that now is the time to either make the commitment to finish this important project or to abandon it. I believe the weight of the arguments and the success of past votes indicates the Space Station will win our full support. In the spirit of changing the way we do business and in response to President Clinton's leadership in supporting the Space Station as an international partnership, I believe that time has come to commit Congress to America's future: Space Station.

SALUTE TO SONNY DRIVER

HON. THOMAS M. FOGLIETTA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. FOGLIETTA. Mr. Speaker, I rise today to recognize Mr. Sonny Driver, the publisher of Scoop, U.S.A., "The Community Peoples Newspaper," which reaches communities throughout the Philadelphia area.

Sonny Driver has always been closely connected to the heartbeat of the city of Philadelphia. Throughout his work in the management and promotion of some of our Nation's top entertainers, Mr. Driver saw a need for the exposure of minority entertainers and community businesses in the Delaware Valley. Mr. Driver created Scoop, U.S.A. to fill that void.

The first issue of Scoop, U.S.A. was published on February 28, 1960. In the first years of its publication, Scoop, U.S.A. primarily focused on the entertainment scene in the Philadelphia area. Over the years, it has expanded to report on all news and events which will encourage the positive development and growth of the community.

For 35 years, Scoop, U.S.A. has been a viable and informative publication. It continues to be an important medium for the entertainment industry, and a valuable source for the disbursement of information which is used by members of the community, local businesses, and national organizations. Scoop, U.S.A. is a place where positive achievements and events of community individuals and organizations can be found on a regular basis.

Scoop, U.S.A. is distributed every Friday in communities throughout the Delaware Valley and southern New Jersey. Each issue of Scoop, U.S.A. contains information to enhance the life of inner-city youth, homeowners, senior citizens, and community businesses.

In addition to his work with Scoop, U.S.A., Mr. Driver has provided other minority-owned publications in the Delaware Valley with technical and graphic assistance. Mr. Driver never hesitates to help others, including other publishers who may compete with him for local advertising. He is clearly committed to helping others whenever it is possible.

Mr. Driver has received numerous awards for the contribution he has made to the community through the services offered by Scoop, U.S.A.

I hope my colleagues will join me today in recognizing Mr. Sonny Driver for his great accomplishments and contributions to communities throughout the Delaware Valley. I wish him the best of luck in all his future pursuits.

HONORING MARTHA K. GLENNAN

HON. THOMAS M. DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. DAVIS. Mr. Speaker, it gives me great pleasure to rise today to honor a woman from Northern Virginia who has given so much to her community and is being honored with the Fairfax County Citizen of the Year Award.

Martha K. Glennan, chair of the Fairfax Area Disability Services Board and president of Project WORD, Working and Organizing Resources for People with Disabilities, has been named Citizen of the Year by the Fairfax County Federation of Citizens Associations.

Under her leadership as chairman, the Fairfax Area Disability Services Board completed the first community needs assessment, focusing on more than 29,000 adults with disabilities. Recommendations targeted State and local service delivery system changes, as well as needs for housing, health transportation and employment.

She has spoken out forcefully on the need for Fairfax County to move forward and comply with the Americans with Disabilities Act. Her very presence in a meeting challenges preconceived notions about disability. She is knowledgeable, innovative, and skilled, using her sense of humor to press home her point.

The Fairfax County Federation of Citizens Associations is a 56-year-old, non-partisan, non-profit volunteer-run organization that serves as the umbrella group representing more than 200 Fairfax County civic and homeowner organizations. Through its committee structure, the Federation addresses a broad scope of county-wide concerns in the areas of transportation, education, budget and finance,, health and human services, public safety, land use, environment, and other issues of concern to county citizens. The Federation often works closely with other county organizations to pinpoint issues of community concern before the Fairfax County Government, the Virginia General Assembly, and other governmental bodies.

Mr. Speaker I know my colleagues join me in honoring Martha K. Glennan and two Citation of Merit award winners, Kathryn Brooks, 84 for providing older Americans an opportunity to continue their education and Marilyn Gould, for her contributions to Northern Virginia Community College, Leadership Fairfax and the Council for the Arts. These citizens are to be commended for their outstanding achievements and hard work for the community.

TRIBUTE TO MORROW BROWN GARRISON

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. FAWELL. Mr. Speaker, I rise today to pay tribute to Morrow Brown Garrison, a civic leader in my district and a national leader in manufacturing technology. He exemplified what is best about this country—hard work and commitment. He was born on March 21, 1930, to Leldon D. and Grace Lorraine Garrison.

Gary, as he was known to his friends, volunteered for the U.S. Navy at the age of 18. He served from 1948 to 1952. Those 5 years of active duty included a tour of duty in Korea and two in the European theater. Gary earned the rank of first class petty officer on the U.S.S. *Johnson*. He received an honorable discharge with a good conduct medal and a captain's commendation.

While his ship was docked in Newport, RI, he met a charming young woman named Gertrude Bouzan. When Gary returned to civilian life he married Gertrude on June 13, 1953. His new wife's family and his commitment to completing his education would keep him in the New England area.

Gary pursued his education at Northeastern University. In 1957 he received his bachelor of science with a major in accounting. Accomplishing this was no easy task. He needed to take two jobs, as both a painter and as an apprentice building superintendent, to pay for his education which he pursued during the day. The late 1950's brought on yet another stage in Gary's life. This stage would be marked by the birth of his only child Brenda Gail Garrison.

In 1964 he took a position as controller of Snow Manufacturing Co. This company was soon after bought by Wallace Carroll. This

transition would begin an association that would form a major portion of his working career. Gary's commitment and loyalty to the enterprise was quickly noted and he was made a vice president in 1972. Gary's hard work was also noted and he was soon given more duties and responsibilities.

In the 1970's and 1980's he served as vice president and director of American Machine and Science, Inc. [AMSI], another company owned by the late Mr. Carroll. Gary would later become president of AMSI group of companies. In the late 1980's he was appointed to serve on one of the committees of the National Machine Tool Builders, now known as the Association for Manufacturing Technology. His good suggestions and hard work earned him election in 1987 as treasurer of that organization.

Gary served as chairman of the association from 1993–94. In that capacity, he represented the association on matters of trade, technology, political, and legal matters. He led conferences and missions in Bangkok, Thailand, Japan, Hawaii, and Washington, DC. Gary was able to see some of his recommendations enacted into law by the U.S. Congress.

Gary will be remembered fondly by the many friends and family he leaves behind. He was loyal to both his friends and business associates. This loyalty was shown through his dedication to CRL industries, of which he worked for in some capacity since 1964. Gary cared for his community and friends and was generous with his time.

His memory will be cherished by his wife of 42 years, Trudy, and by his daughter and son-in-law Brenda and Ward Hinds, his brother Don and wife Barbara Garrison, and sister Dorothy and husband Daniel Nix, and sister Margaret Hauser.

Mr. Speaker, Gary was a caring individual who achieved a great deal in his lifetime. He was a leader in his community, in his business, and in national and international manufacturing technology. He will be well remembered. My most heartfelt condolences go to his friends and family.

TRIBUTE TO LT. COL. TODD E. BLOSE

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. MATSUI. Mr. Speaker, I rise today to pay tribute to Lt. Col. Todd E. Blose for exceptionally meritorious service from July 1993 to May 1995, while serving as the last commander of the Sacramento Depot Activity.

The closure of the Sacramento Army Depot has been an unparalleled success and has become a standard of excellence held up at the highest levels of the Army and Department of Defense. In all aspects of the closure, environmental cleanup, transfer of missions and equipment, transition of real property, and reuse of the facilities, the Sacramento Depot Activity family has led the way with resourcefulness, innovation, and dedication.

Lieutenant Colonel Blose has been the leader of this process, collaborating with a very diverse group of individuals and agencies at the local, State, and Federal levels. Closure of the base was completed 2 years ahead of the original base closure schedule saving over $10 million in fiscal year 1994, $7 million in fiscal year 1995 and $1.5 million in caretaker funds in fiscal year 1996 and fiscal year 1997.

This accelerated closure could not have been accomplished without the impressive support received from the civilian employees who were, in fact, losing their jobs through the closure. Lieutenant Colonel Blose convinced the employees that he would work hard on their behalf and gained their promise of dedicated service to support the closure process. He carried through on his promise and was able, through extensive and aggressive outplacement efforts, to place all but 161 of the original 994 employees on board when he arrived. These 161 have continued to receive support and 10 have received subsequent job placements.

Lieutenant Colonel Blose led the efforts to complete the necessary environmental documentation for closure, have the appropriate agencies review the findings, and gain their approval. Many real estate and environmental proceeding actions and negotiations had to take place concurrently so that all required documents were in place by the target closure date on March 3, 1995. There were numerous challenges encountered during the past 2 years, none more difficult than completing the radiation surveys at the depot and gaining delicensing approval. Lieutenant Colonel Blose's knowledge of radiation issues and his skill in teamwork and persuasion were vital in coercing reluctant bureaucracies to expedite their efforts on the depot's behalf and to maintain the proper balance of cost versus risk.

Lieutenant Colonel Blose also played a key role in establishing and cochairing the Restoration Advisory Board, which reviewed and ultimately supported the cleanup process. He also provided valuable input and counsel to the city of Sacramento Army Depot Reuse Commission. The resulting reuse plan laid the groundwork for attracting Packard Bell Electronics to the depot site, completely replacing the former depot work force and providing the basis for the city's $7.2 million payment to the Army for the property in 2005.

In his command tour at Sacramento Depot Activity, Lieutenant Colonel Blose set a tone of professionalism, teamwork, and compassion. He challenged his staff and employees to perform extraordinary efforts and they responded with an accelerated closure which is being cited as the national model for base closure, environmental cleanup, and reuse. I ask my colleagues to join me in saluting Lieutenant Colonel Blose's exceptional leadership performance, which is a credit to himself, the Tooele Army Depot Complex, the Industrial Operations Command, and the U.S. Army.

ADULT EDUCATION AND FAMILY LITERACY ACT OF 1995

HON. DALE E. KILDEE

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. KILDEE. Mr. Speaker, today I am introducing along with a number of my colleagues the Adult Education and Family Literacy Reform Act of 1995. We are pleased to join with the Administration of this effort to improve the way literacy services are provided to adults and families.

There is a literacy crisis in this country. As the 1993 National Adult Literacy survey shows, more than 20 percent of adults performed at or below the 5th grade level in reading and math—far below the level needed for effective participation in the workforce. And because a parent's educational level is a strong predictor of children's academic success, the effects of this crisis move from one generation to the next with tragic regularity. Despite the obvious need for literacy services among our Nation's adults, the Adult Education Act serves only a small percentage of those people who need help. This fact was underscored by the recent National Evaluation of Adult Education Programs. While many adults benefit from participation in the program, many leave before they achieve any literacy gains. Overall, the current design of adult education and family literacy programs is too diffuse and diverts human and financial resources from what should be the focus of all Federal literacy efforts; the provision of high-quality, results-oriented services.

The literacy crisis we are facing as a Nation are serious, ranging from the diminished productivity of business and industry to the inability of parents to help their children do better in school. In response, the Adult Education and Family Literacy Reform Act creates, by consolidating a number of related programs into a single grant to States, a performance partnership designed around five broad principles—quality, flexibility, streamlining, consumer choice, and targeting.

The bill responds to concerns regarding the potential duplication of adult education and family literacy programs by creating a single funding stream to States. It consolidates separate discretionary programs for library literacy, workplace literacy, and literacy programs for prisoners and the homeless. The bill will ensure that the needs of at-risk populations are met and requires States to assess the adult education and family literacy needs of the hard-to-serve and most-in-need.

Demand for adult education programs has exploded in recent years for reasons as varied as the need to learn English to become an American citizen, to upgrade employment skills, to obtain a GED, to learn to read and dozens of others too numerous to list today.

I hope you will join me in helping American adults reach their full potential as citizens. Please call Sara Davis or my staff.

NATIONAL VOLUNTEER WEEK

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Ms. KAPTUR. Mr. Speaker, I rise today to recognize efforts in Northwest Ohio to celebrate the beginning of National Volunteer Week in America. It is very hard to imagine our country without its corps of ready, willing and able volunteers. So strong and proud is America's history of volunteerism, that the concept and nature of "American Volunteerism" has become an institution by which the world recognizes and understands our national identity of compassion and caring for our fellow humankind.

Has there ever been a time in our history that there were not volunteers ready to lend a hand? Beginning with Paul Revere and extending right through to the response of emergency and medical personnel to last week's tragedy in Oklahoma—Americans have always been ready to help their fellow citizens.

While volunteerism in America does not always manifest itself in terms as dramatic as when every available doctor and nurse within a 100-mile radius and beyond rushes to the scene of a tragedy, it is no more important or devoted than the millions of Americans who respond daily and regularly to the unsatisfied needs of their communities.

Here in our community, volunteers feed the hungry, shelter and minister to the homeless, reach out and touch minds that are eager to learn and spirits that yearn to fly. Even in the lives of those whose needs are not borne from necessity, but whose pursuits are dedicated toward service and improvement, volunteers make the day.

I know my colleagues join me in recognizing National Volunteer Week and in saying to every citizen in our community and country who works for a recompense that no amount of money can satisfy, thank you for answering the call, thank you for helping make our country a better place.

TRIBUTE TO DR. NEAL THOMAS JONES

HON. THOMAS M. DAVIS

OF VIRGINIA

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. DAVIS. Mr. Speaker, my colleague and I rise today to pay tribute to a fine individual of the Eleventh District of Virginia, who has contributed so much to his community.

Dr. Neal Thomas Jones retired as pastor of Columbia Baptist Church in Falls Church, Virginia April 30, 1995 after twenty-six years of dedicated and faithful service. Under Dr. Jones' leadership, the congregation became one of the largest congregations of any faith in Virginia and a leader among Virginia Baptists. Because of his vision, Columbia Baptist has extended its reach far beyond the traditional religious activities to include an array of intensive community services. Among them are:

World Friends, which provides English As A Second Language Instruction for more than 100 people each week.

Church and Community Ministries, which provides food, clothing, furniture, rent, and transportation to more than 500 people annually.

Columbia Child Development Center which provides Day Care for approximately 200 children on a year-round basis; Care-A-Van which at its peak delivered more than 200 meals weekly and served as a life line for many rescued from homelessness.

Counseling Ministry, which involves crisis prevention and crises prevention measures such as marriage preparation and parenting classes.

Columbia Institute of Fine Arts, which provides instruction to the community in fine arts.

In addition, Columbia Baptist facilities have become a vital resource for various community support groups including Alcoholics Anonymous, Survivors of Incest, Narcotics Anonymous, Alzheimer support groups, Alzheimer Day Care Program, Family Nurturing Training Program, Muscular Dystrophy and other support groups.

Columbia Baptist Church's other activities include working with local Police Departments to provide summer camps for children from disadvantaged areas, working with city and county agencies to provide a myriad of community services to the poor and disadvantaged, and fostering a sister relationship with the Baptists of Moscow before the days of normalized relationship. Furthermore, Columbia Baptist provides facilities for various community events including regional conferences on drug abuse and prevention, and mental health services related to aging, including the White House Conference on Aging in 1995.

Mr. Speaker, we know our colleagues join us in honoring Dr. Jones whose church has attracted the neediest downtrodden elements of our society along with diplomats, members of Congress, professional football coaches, and others who sought spiritual inspiration.

A TRIUMPH OF COMMON SENSE

HON. DOUG BEREUTER

OF NEBRASKA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. BEREUTER. Mr. Speaker, Washington, DC's, Metro deserves high praise for its steadfast resolve which resulted in a common sense agreement on its subway platform edges. Last year, the Department of Transportation insisted that Metro install costly platform edges with bumps in order to warn blind riders and comply with the Americans with Disabilities Act. However, this huge expenditure would have resulted in little, if any, benefit. In fact, there was disagreement among the organizations representing the visually impaired about the merit of the platform edge requirement. This appeared to be yet another case of the Federal Government forcing compliance simply for the sake of compliance rather than making an effort to meet an actual need. On June 13, 1994, this Member wrote to Metro's general manager, Lawrence Reuter, to urge him to stand up to the DOT bureaucracy and fight for a practical solution. A copy of the letter was also sent to Transportation Secretary Federico Peña.

This Member is pleased that a reasonable agreement has now been reached between Metro and the Federal Transit Administration. Under the agreement, Metro will install a system of transmitters that will allow visually impaired riders wearing wrist beepers to be signaled when they are too close to the edge of the subway platform. This system will be much less expensive than the proposed bumpy platforms and should also provide a higher degree of safety. This Member also commends the Federal Transit Administration for finally demonstrating common sense and flexibility in arriving at this agreement. Too bad it took a confrontation to reach a common sense solution but sometimes that is necessary.

Mr. Speaker, this Member commends to his colleagues the following editorial in support of the agreement from the April 27, 1995, edition of the Washington Post.

METRO PLATFORMS: REASON PREVAILS

It had all the earmarks of a classic legal regulatory battle between a regional agency and the federal government: Metro General Manager Lawrence G. Reuter was bucking an order from the federal government under the Americans With Disabilities Act to rip out and replace all of its subway platform edges as a safety measure for blind riders. Comply or risk federal funding, said the Department of Transportation's Federal Transit Administration. It's too expensive and isn't needed on a system with a good safety record already, replied Mr. Reuter.

We'll sue, said DOT. We're not budging, said Metro, noting that there was a division of opinion among organizations representing people whose vision is impaired as to the usefulness, or potential additional hazards, of the federally mandated surfaces with raised bumps.

But now, after nearly a year of wrangling, bumpy edges are giving way to smooth solutions. The Clinton administration has backed away from its demand, settling instead for agreement by Metro to install a system of transmitters that will signal blind riders wearing wrist beepers that they are close to platform edges. Federal mass transit administrator Gordon J. Linton concluded that the regulation is "so narrow and prescriptive" that "there is not room to exercise judgment or discretion" and agreed to grant Metro's request for a "determination of equivalent facilitation" for the edges that are already along the platforms.

Translation: Score one for good sense. Instead of proceeding with expensive, time-consuming litigation to try to force expensive, revenue-consuming measures to resolve a problem that didn't seem to be one, the federal government though better of it.

TRIBUTE TO THE CIVIC LEAGUE OF GREATER NEW BRUNSWICK, INC.

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. PALLONE. Mr. Speaker, on Saturday, May 13, 1995, at the Pines Manor in Edison, NJ, the Civic League of Greater New Brunswick, Inc., will hold its annual dinner. I rise today to pay tribute to this great institution, which has made such a significant difference in the lives of generations of people in Middlesex County.

The Civic League of Greater New Brunswick, formerly the Urban League, was established in 1945 as a civil rights organization. A non-profit, tax-exempt organization, the League's mission is "to enable African Americans and other minority group members to cultivate and exercise their full human potential on par with all other Americans. To accomplish this mission, the Civic League intervenes at all points in the social and economic structure where the interests of African Americans, other racial minorities and the poor are at stake." To accomplish this mission, the League provides community advocacy along with the provision of employment and housing referral services. The League also offers a comprehensive youth development program to help young people become academically successful, emotionally sound and productive contributors to their communities.

The Civic League is governed by a 21-member Board of Directors, volunteers with a diversity of backgrounds and experiences. This policy-making body has set a major agenda for the 1990's which includes more program activities in the health and youth development areas. The Project 2000 Program, supported by corporate volunteers, became one of the first initiatives developed as a result of an increased focus of the organization on early youth development activities. A Middle School Development Program was initiated recently, also with corporate support, to offer classroom support to the public school adolescent population. Since 1970, C. Roy Epps has served as the League's Executive Director. The 25th anniversary of Mr. Epps's leadership of the League was marked 2 months ago with a roast in his honor.

Mr. Speaker, it is an honor and a privilege as the Representative of the Sixth District of New Jersey to pay tribute to this great institution located in my district. The Civic League of Greater New Brunswick is a wonderful example of everything that is good about America—dedicated people working together, often under difficult circumstances, to build a better community and provide our people with a sense of purpose, direction and hope.

TRIBUTE TO THE TOWNSHIP OF MONTCALM, MI

HON. DAVE CAMP

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. CAMP. Mr. Speaker, it is with great pleasure that I rise today to recognize an outstanding township in the State of Michigan. Montcalm Township is like many townships throughout the United States, but it possesses a unique character all its own. On May 20, 1995, the township of Montcalm, MI, will commemorate 150 years of history by celebrating its sesquicentennial anniversary.

Nestled among serene lakes and the surrounding beautiful landscape of mid-Michigan, the township of Montcalm is rich in historical heritage and tradition. Montcalm Township was established on March 19, 1845, and was the pioneer township of what is now Montcalm County. It grew to become an essential township in the region, due primarily to its vast contributions to the rural and logging communities of Michigan.

As the industrial revolution swept the country, the citizens of Montcalm Township succeeded in holding on to much of the area's historical tradition. It maintains its rural connections to this day, while still managing to prosper within the State economy.

The citizens of Montcalm Township are to be commended for providing an impeccable example of a growing community. While exceeding in economic excellence, Montcalm Township also provides its residents with the tight knit community feeling of a small town.

Mr. Speaker, Montcalm Township has a colorful history and bright future. Its commitment to the community and its citizens embody the ideals that make this Nation great. I know you will join me in congratulating the citizens of Montcalm Township on their 150th anniversary and wishing them well during their sesquicentennial celebration. We hope Montcalm Township will continue to provide the same example of strong community spirit for the next 150 years.

HONORING DR. MARIO SALVADORI, DISTINGUISHED EDUCATOR

HON. GARY L. ACKERMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. ACKERMAN. Mr. Speaker, I join today with my constituents in the Fifth Congressional District of New York City recognizing Dr. Mario Salvadori.

For more than two decades, Dr. Salvadori has distinguished himself with effective efforts to help his students discover and understand mathematics and science through the wonders of architechure and engineering.

Mr. Speaker, in April 1975, Dr. Salvadori boldly accepted the challenge issued by the New York Academy of Science to "do something to improve mathematics and science education" in the public schools of New York City by volunteering to teach an innovative course, "Why Buildings Stand Up." to 30 disadvantaged seventh-grade students.

Throughout the years, Dr. Salvadori has continued to teach and write books of children and instructional manual for teachers. At the same time, he has developed an exciting, innovative, and effective program of hands-on activities base upon the familiar urban built environment. Eight years ago, he founded the Salvadori Education Center on the Built Environment [SECBE] to expand the reach of his innovative pedagogy and instructional materials. SECBE has now grown into a nationally known influence for the improvement of science and mathematics education.

In the 20 years since Dr. Salvadori began this noble cause, more than 600 teachers have incorporated the Salvadori methodology into their classroom practice. More than 100,000 students in New York City alone have benefited from their involvement in SECBE programs, demonstrating significant improvement in their mathematics and science studies, and increased motivation to remain in school.

In addition to the effective impact Dr. Salvadori has made upon our educational system, he has emerged as a major force in the field of architecture and engineer. As a partner and chairman of the board of Weidlinger Associates, Consulting Engineers, he has had a role in developing and constructing buildings all over the world. He was served on the staffs of Columbia, Princeton and the University of Rome. His publications in the fields of applied mathematics and architecture have been distributed world wide in over a dozen languages. Dr. Salvadori's colleagues have long recognized his brilliance, and he has received numerous medals and awards in architecture and engineering.

Mr. Speaker, I ask all my colleagues in the House of Representatives to join with me this day in recognizing Dr. Mario Salvadori, a dedicated educator, a leading architect, and a person who unselfishly gives of his many talents.

CELEBRATING FIFTY YEARS OF COMMUNITY SERVICE BY THE AVON CLUB

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. COYNE. Mr. Speaker, I am pleased to have this opportunity to join with my constituents in saluting the members of the Avon Club who are celebrating over 50 years of community service.

The Avon Club was formed in 1944 as a social and community organization with membership open to women age 18 or over who live and work in the municipalities comprising the Avonworth School District. This area includes Ben Avon, Ben Avon Heights, Emsworth, Kilbuck and Ohio Township. It is an honor to represent these communities in the U.S. House as the Representative for the Fourteenth Congressional District and I want to

speak to the Members of the House about the outstanding nature of the community service provided by the Avon Club.

The Avon Club was originally started in 1944 by women whose husbands were serving in World War II. Avon Club members aided the war effort by rolling bandages, knitting sweaters and corresponding with servicemen. When the war ended, Avon Club members refocused their activities on a broader array of social interests and community projects. the Avon Club also established itself as a service organization willing to raise money to support civic improvements and other charitable community organizations.

Each year the Avon Club hosts two major fundraisers to support its many community service activities. An annual fall festival is sponsored in early October and this event features a celebration of the creative, musical, and culinary talents of local district residents. The annual fashion show and luncheon provides an opportunity to enjoy food and good conversation while viewing the latest from the fashion world. In addition to these fundraisers, the Avon Club has published a community telephone directory since 1952. Members canvass their local neighborhoods and all residents, local businesses, and merchants are invited to be listed in this valuable community resource.

Avon Club member dedicated the proceeds from these fundraising activities to the support of several charitable activities. Since 1990, these charitable activities have been managed by the Avon Club Foundation, a nonprofit organization which manages both fundraising activities and the distribution of funds. In 1994, the Avon Club Foundation gave away $7,671 and brought the total level of philanthropic contributions throughout their 50 years to over $100,000.

The Avon Club Foundation is guided by long-range goals emphasizing service to education, recreation, the environment and social responsibility. The foundation has donated funds to local parks, schools, sports organizations and also provides assistance to charitable organizations serving women and children. Members of the Avon Club have also volunteered with local recycling efforts and community cleanup days.

Mr. Speaker, it is fitting for the Members of the U.S. House of Representatives to join in saluting an organization like the Avon Club. The Members of the Avon Club are to be commended for their energy and neighborhoods together to the benefit of all local residents.

TRIBUTE TO CAPT. MIKE TRACY AND SGT. TOM VANDERPOOL

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Ms. HARMAN. Mr. Speaker, on Monday, May 15, the Grand Lodge of the Fraternal Order of Police will honor over 100 police officers from across the Nation who were slain in the line of duty. Among those officers are two courageous men from the 36th Congressional District of California who gave their lives to protect others. It is with deep sadness that I join in paying tribute to these individuals, Capt. Mike Tracy and Sgt. Tom Vanderpool.

Mike Tracy and Tom Vanderpool were both gunned down by a robber on February 14, 1994, while they attended a management seminar for employees of the city of Palos Verdes Estates, CA. Both men were model police officers who leave behind family, friends, colleagues, and a community made all the better by their service.

Mike, who was raised in Torrance, CA, first joined the PVE Police Department as a reserve officer in 1966. His colleagues described him as a "cop's cop": instinctive, professional, and supportive of his fellow officers. Those close to him say he liked to "live life to the fullest," and many were touched by his humor and humanity. In his spare time, Mike counseled teenagers in trouble. He was also a husband, and father of two.

Tom spent his early years in law enforcement with the Los Angeles Police Department before beginning 13 years of service with the PVE Police Department. He was respected by his colleagues and occupied a special place in the hearts of needy children in the community. Every Christmas, he would use his patrol car to deliver toys, blankets, and clothing to these children and their families. A husband and father of three, Tom was preparing to celebrate his 36th wedding anniversary shortly before he was killed.

My heart fills with sadness when I think of the tragic circumstances surrounding the deaths of these two officers. The job of our law enforcement officers has changed dramatically from earlier times in our Nation's history. Not only must these officers protect our citizens against dangers unimaginable, but they must increasingly protect themselves from mindless expressions of rage and frustration. We owe an enormous debt of gratitude to those men and women who do the job of law enforcement every day.

A luncheon to award the South Bay Medal of Valor was recently held in my district to honor those who have performed heroic acts in the line of duty. Capt. Mike Tracy and Sgt. Tom Vanderpool were both awarded the medal posthumously. I only wish the legislative schedule had permitted me to be there, as I was when hundreds of Californians including my Governor attended their funeral.

To their families and friends, and to the families and friends of all officers slain in the line of duty, your loved ones were patriots. They gave their lives for ours.

IN HONOR OF GILBERT HERRERA, OUTSTANDING YOUNG TEXAS-EX

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. HALL of Texas. Mr. Speaker, it is my privilege to rise today to pay tribute to Gilbert A. Herrera, a recipient of the 1995 Outstanding Young Texas-Ex Award. Gilbert was a page in the Texas Senate during the time that I was a Texas State Senator, and we have been great friends ever since. Gilbert's intelligence, enthusiasm, and commitment to excellence have served him well, culminating with this prestigious honor.

The Outstanding Young Texas-Ex Award has been presented annually since 1980 by the Ex-Students' Association to four alumni under the age of 41 who have excelled in their chosen fields of endeavor and have shown loyalty to the University of Texas. The 1995 award will be presented during UT's spring commencement ceremonies on Saturday, May 20.

Gilbert graduated from UT in 1978 with a B.B.A. degree in finance. He is a principal of G.A. Herrera & Co., a private investment banking firm with offices in Houston and Austin, and he is also a consultant on corporate governance. Gilbert previously served in a variety of corporate finance and banking positions. In 1993 he was appointed by the Supreme Court of Texas to the Commission for Lawyer Discipline, where he serves as chair of its budget committee.

Gilbert also has been active in community service. He is a member of the Board of Advisors for the Texas Product Development Commission. In Houston he served on the Houston Parks Board and as trustee of the Harris County Mental Health and Mental Retardation Authority, where he chaired the Legislative and Employee Benefits Committees. Gilbert is a life member of the Ex-Students' Association, a lifetime member of the Century Club, a member of the Littlefield Society, the UT Chancellor's Council, the MBA Investment Fund, L.L.C., and the Longhorn Associates for Women's Athletics.

Gilbert and his wife, Kari, have been personal friends of mine for many years. Today I join their family and many friends in offering my sincere congratulations to this outstanding young Texas Ex on his selection for this prestigious award. His achievements are a source of pride for his family, his friends, and the University of Texas, and I know that he will continue to distinguish himself in his profession as well as in his service to his community, his State, and his country.

IN RECOGNITION OF THE MEXICAN-AMERICAN OPPORTUNITY FOUNDATION

HON. ESTEBAN EDWARD TORRES

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. TORRES. Mr. Speaker, I rise today to congratulate and recognize the Mexican-American Opportunity Foundation [MAOF] as they inaugurate their new facilities on Thursday, May 11, 1995.

MAOF was founded in 1962 by Mr. Dionicio Morales in Los Angeles, CA, and for over 33 years it has provided educational and charitable assistance to the general public and the Latino community. MAOF has developed and administered projects, programs, research and related activities on behalf of the socially and

economically disadvantaged youth and adults of our community.

One of the special projects began when Mr. Morales and MAOF recognized the plight of Latina women. Eighteen years ago, MAOF created "Visiones Hispanas", a Hispanic women's conference that focuses on Hispanic women's needs and provides direction on career and education opportunities.

In furthering their mission to assist economically disadvantaged individuals, MAOF has established child care development programs. MAOF founded these centers to provide a bilingual/bicultural learning environment for children. It is a developmental program where children, whether they speak only English or only Spanish, become an integral component of this educational interaction with the teachers. Additionally, MAOF sponsors child nutrition programs, in conjunction with their child social interests and community projects. the Avon Club also established itself as a service organization willing to raise money to support civic improvements and other charitable community organizations.

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Gilbert and his wife, Kari, have been personal friends of mine for many years. Today I join their family and many friends in offering my sincere congratulations to this outstanding young Texas Ex on his selection for this prestigious award. His achievements are a source of pride for his family, his friends, and the University of Texas, and I know that he will continue to distinguish himself in his profession as well as in his service to his community, his State, and his country.

IN RECOGNITION OF THE MEXICAN-AMERICAN OPPORTUNITY FOUNDATION

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In short, MAOF has been at the forefront of helping the people of the community advance and prosper through work and education.

Mr. Speaker, it is with pride that I rise to recognize one of the finest community organizations in the country, the Mexican-American Opportunity Foundation, and its founder, Mr. Dionicio Morales. I ask my colleagues to join me in congratulating them and wishing them continued success in their new facility.

DR. CHARLES A. BRADY, A MULTI-TALENTED MAN

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. LAFALCE. Mr. Speaker, western New Yorkers and the Canisius College community in Buffalo this weekend mourned the passing of Dr. Charles A. Brady, former head of the college's English department, author and literary critic for the Buffalo News for more than half a century.

Dr. Brady was an extremely talented, multifaceted person, as evidenced by the Buffalo News' obituary, which described him as: "A professor, poet, novelist, critic and caricaturist * * *."

In addition to his voluminous literary creations, Dr. Brady will also be remembered fondly by the many generations of Canisius' alumni, like me, who were taught and influenced by him.

Following are his obituary which appeared in the Buffalo News, and an insightful article by Jeff Simon, the News' book editor, which appeared in the paper May 9 and headlined: "A Man of Letters, But Even More, a Man of Life."

CHARLES A. BRADY DIES; CANISIUS PROF., AUTHOR, LITERARY CRITIC FOR NEWS WAS 83

Charles A. Brady, former head of the English Department at Canisius College, author and literary critic for The Buffalo News for five decades, died Friday (May 5, 1995) in Sisters Hospital, following a long illness.

A professor, poet, novelist, critic and caricaturist, Brady had used both pen and wit to illuminate even the darkest recesses of literature for three generations of Western New Yorkers. He was 83.

Brady, who was born April 15, 1912, often pointed out that he was born "the day, the hour and the moment that the Titanic sank."

It was that coincidence, he said, that gave him his "bent for epic things."

For more than 50 years, Brady served as an intellectual beacon to students and residents of the Buffalo area and beyond, contributing to and interpreting the literary scene both here and abroad.

A man of enormous enthusiasm and dauntless energy, Brady since childhood defied a serious heart condition and pursued an active life, often from his bedside at home, or in the hospital.

Brady wrote four novels. One of them, "Stage of Fools: A Novel of Sir Thomas More," outsold any book published by E.P. Dutton in 1953. It was translated into Dutch and Spanish and printed in paperback as well as hard cover.

In 1968, the Poetry Society of America gave first prize to Brady's "Keeper of the Western Gate" and, in 1970, its Cecil Hemley Memorial Award for the best poem on a philosophical theme, "Ecce Homo Ludens."

C.S. Lewis, the eminent British author, once called Brady's critique of his work the best published in Great Britain and the United States.

Brady's literary output was voluminous—from novels, short stories, poems, children's stories, holiday "fantasies," to critical essays and book reviews. Throughout his work ran the deep vein of history.

Son of Andrew J. Brady, Sr., a former lumberman who owned freighters on the Great Lakes, and Belinda Dowd of Black Rock, Brady's commitment to literature began at Canisius College, which he attended after graduating from Canisius High School in 1929. He received his bachelor of arts degree from Canisius in 1933.

During those years, he also played championship tennis and, in the spring of 1987, was named to the Canisius College All Sports Hall of Fame for his undergraduate tennis prowess.

He received a master of arts degree in English from Harvard University and then returned to Canisius at age 23 as an associate professor of English.

A year later, he was promoted to professor and chairman of the English Department, a position he held until 1959, when he continued his professorship until retirement in 1977.

In his more than 40 years at the college, he touched and helped mold the tastes and lives of thousands of students and graduate students, many from other colleges or universities, who also attended his courses or sought his counsel.

The AZUWUR, the Canisius College yearbook, was dedicated to Brady in 1956 and again in 1976.

From 1938 to 1941, Brady directed Canisius College's graduate division, and during World War II, in addition to his English classes, he taught the classics, French, military geography and Renaissance history.

Academically, Brady probably was best known for his lectures and critical studies of Cooper, Marquand, Sigrid Undset, Charles Williams, the Volsunga Saga, John Le Carre and C.S. Lewis. His studies on J.R.R. Tolkien and, more especially, Lewis, have been cited as "definitive in this country."

Copies of Lewis' original letters to Brady, embracing a correspondence that the British author initiated and that continued over a number of years, are in the Bodleian Library at Oxford University.

In addition to "Stage of Fools," Brady's works include "Viking Summer," which combined Norse legend with a present-day Niagara Frontier setting; "This Land Fulfilled" and "Crown of Grass," both historical novels; "Wings Over Patmos," a book of verse; and "A Catholic Reader," a personalized anthology.

For children, he wrote "Cat Royal," "The Elephant Who Wanted to Pray," "The Church Mouse of St. Nicholas" and "Sir Thomas More of London Town." For older children, he wrote "Sword of Clontart" and "The King's Thane."

A short story, "The Foot That Went Too Far," which he had written as an undergraduate, was the origin of the griffin as the Canisius College mascot.

The capstone of his career at Canisius was writing the college's centenary history, "Canisius College: The First Hundred Years." Written over almost five years, the book, unlike most school histories, was done in an impressionistic style, capturing the spirit of the college as well as that of the Niagara Frontier.

Brady wrote for national and international journals, and reviewed books for other major publications, such as The New York Times, the old Herald Tribune, America, Commonweal and the Catholic World.

A man of many talents, including some musical composition, Brady enjoyed drawing line caricatures of authors, many of which were used to illustrate his critical essays and book reviews for The News. His last book review and drawing for The News was printed March 12.

In September 1986, the Burchfield Center at Buffalo State College exhibited his literary caricatures in a one-man show.

A familiar figure on the lecture platform, Brady held the Candlemas Lectureship at Boston College and gave Notre Dame's Summer Lectures in the humanities.

The News named him "an outstanding citizen" in 1970.

He was the recipient of the Canisius College LaSalle Medal, the highest honor awarded to an alumnus. In 1970, the Canisius Alumni Association presented him with its Peter Canisius Medal for his "scholarly brilliance and teaching excellence that inspired and informed legions of Canisius students."

A longtime resident of the Town of Tonawanda, he moved to Buffalo's Delaware District in the early 1990s.

Brady is survived by his wife of 57 years, the former Mary Eileen Larson; four daughters, Karen Brady Borland and Moira Brady Roberts, both of Buffalo, Sheila Brady Nair of New Bethlehem, Pa., and Kristin M. of London, Ont.; two sons, Erik L. of Arlington, Va., and Kevin C. of Buffalo and 17 grandchildren.

Prayers at 11 a.m. Monday in the George J. Roberts & Sons Funeral Home, 2400 Main St., will precede a Mass of Christian Burial at 11:30 a.m. in Christ the King Chapel at Canisius College, 2001 Main St. Burial will be in Mount Olivet Cemetery in the Town of Tonawanda.

A MAN OF LETTERS, BUT EVEN MORE, A MAN OF LIFE

Charles Brady died on Friday afternoon at age 83. His loss to The News' book pages is virtually incalculable. If it isn't precisely accurate to say that Charles A. Brady invented literary reviewing at The Buffalo News, it's certainly close enough to the truth to pass. He was a treasured literary voice here in five separate decades.

I've been The News' book editor for six years and was the book assignment editor for six years before that. Editing Dr. Brady and finding books that I knew would stimulate him provided the job's greatest pleasures.

His latest work would appear in my mail every Friday or Monday morning. Inside the envelope—impeccably typed on soft, old-fashioned, khaki-colored copy paper—would be three pages of crystalline prose. Accompanying it, on white paper, would be one of his pen-and-ink caricatures. Even on busy Mondays, I would try to save editing Dr. Brady for the last work of the day—an Edwardian reward of wit, wisdom and uncommon grace for dealing with all the coarse, witless drudgery that almost all work requires, journalism included.

At least half the time, there would be a word or spelling in it that I'd never encountered before—some strange semantic hippogriff that Dr. Brady had captured in his library and uncaged for the delight and enchantment of company.

Typically, I'd walk over to our glorious battery of dictionaries in a state of bafflement or skepticism: Surely, this time, it's a misspelling. And then the huge Random House Dictionary, American Heritage Dictionary and Oxford English Dictionary would set me straight—Dr. Brady's was very much a word, even if its usage or spelling were Victorian or Elizabethan.

It's a walk I'll never make again; it's a smile of marvel and appreciation I won't be smiling anymore.

Every day that goes by brings at least one book that I would automatically send to Dr. Brady in total confidence that it would elicit a smile of complicity on the other end of our discourse-by-mail-and-phone.

No discussion was necessary to pick out "Brady books." I have been reading him since my early teens. I knew what he liked or, failing that, what interested him. That was vastly more than the epics or Celticmyths or Irish literature or work of C.S. Lewis, J.R.R. Tolkien and their fellow Oxford Inklings that people thought of as his special province. It encompassed virtually the whole of English literature, early American literature (James Fenimore Cooper was a Brady specialty; minor Twain was a Brady weakness), all American fictional modernism and, late in life, Yiddish and Jewish literature, for which he developed an entirely unpredictable fondness.

We disagreed strongly on some writers, but he was the sort of man with whom disagreement was one of the friendliest experiences you could have. If he never quite subscribed to all the hoo-ha about Jorge Luis Borges from me and others, he would, with impish geniality, point out how much he liked Anthony Burgess, and what was the name Borges, after all, but the Spanish version of Burgess?

It's also true, I think, that he was doing some of the best journalistic work of his life in his final decade. In the place of earlier reviews that could sometimes be constricted by myth (it's tempting to call such prose "myth-begotten" and hope he'd approve), his work in the past decade was informed by marvelous wit, total scholarship and a glorious new clarity. I could delude myself into thinking that our unspoken communication had something to do with it, but I know it's not the case.

I think what his readers read in the past decade was the work of a man who, besides being loved at home, had finally thrown off all the vestiges of professorial presentation. To be as great a teacher as so many generations of Canisius College students say that Charles Brady was requires a certain theatricality—a well-communicated sense of literary passion and identification, an exaggerated self-definition.

You can't just commune with the avid young scholars in the front row. If you have any honor at all, you have to communicate something to the deadheads in the cheap seats. Even if they don't understand a word you're saying, you have to give them some sense of the bardic and of the glory of a life spent in literature.

It made some of this '70s and early '80s journalism operatic in its mythology, I think. In his final decade's work, he had stopped composing operatic arias and started composing magnificent chamber music. It is then, I think, that we heard his truest voice—just as passionate as the Yeatsian visionary his students knew, but wittier, more Edwardian and seemingly effortless.

Wonderfully apropos quotes from the Alexandrian library inside his head would find their way into his work, but so would the damnedest, spot-on references to the society around him.

Anyone who thought that he resided in a 1940s Oxford of his own devising would be disabused of that notion on encountering an up-to-the-minute and unfalsified Brady take on academic gender wars or a perfectly appropriate reference to gangsta rap. (I must confess, the day I first encountered the phrase "gangsta rap" in a review by the 82-year-old Brady, I threw my head back and roared with pleasure.)

He was, in that great Henry James phrase, a thoroughly independent and aware man "on whom nothing was lost."

I remember seeing Dr. Brady on an old '50s Buffalo television show called "The University of Buffalo Roundtable." The subject of Beat poetry came up. The acceptable cant from the Professoriat of the '50s—and certainly from those on that show—was that the Beats were, to a man, hairy and filthy overhyped pretenders. Brady listened patiently to it all and said, "I don't know, I haven't read all of them, but I've read some (Lawrence) Ferlinghetti and I think he's pretty good."

Lest one think that his tower was totally ivory, he was also, without fail, the most journalistically current book reviewer we had—right to the end. It never ceased to amaze me that an old valiant man in failing health was, without question, our greatest sprinter. His reviews of major books would continually precede and presage major treatment in the New York Times and the newsmagazines, often by several weeks. In such matters, his instincts were impeccable.

When longtime readers lose a voice like Charles Brady's it is always a personal loss, even for those who never knew him. But at the end of his life, I think, he was teaching us all some life lessons that were infinitely greater than he ever taught in the classroom—that the life of the mind can not only survive intact to the very hour of our death, but can, until the moment one is visited by what James called "that distinguished thing," actually increase in acuity, understanding and grace.

The world is full of people whom Charles A. Brady taught how to read and write and think.

At the end of his life and bedeviled by illness, he taught us something even richer—how to be.

SUPERIOR PERFORMANCE BY SPRINGFIELD, VIRGINIA'S LEE HIGH SCHOOL CHOIRS

HON. HENRY J. HYDE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. HYDE. Mr. Speaker, once again a magnificent performance by the Lee High School Madrigal Singers and Ladies' Chamber Choir earned them "Superior" marks in the April 22 Boston Festivals of Music Competition.

Schools from the United States and Canada were competing for the honor of being judged "Superior" by receiving the highest numerical score in each category of competition within their division.

In addition to capturing the "Superior" title within their division, the Madrigal Singers were awarded the "Grand Champion" trophy for receiving the highest scores of all choirs competing in the 1995 "Boston Festival." Five scholarships to a choral summer camp were presented to the group.

The Singing Lancers, five separate choirs in all, are a terrific group of teens with many proud accomplishments. The choral program is directed by Mr. Lindsey Florence who has been with Lee since 1978 and directed numerous choirs whose efforts have resulted in award-winning performances in North America.

This special group of young vocalists love to touch the world with their songs, and that is exactly what they did yesterday. The five choirs entertained the young patients at Children's Hospital where they brought some of the children's favorite songs to life in a program they choreographed themselves. Selected choirs have performed at the White House, Drug Enforcement Administration, Virginia Music Educators Conference, and numerous civic organizations. I am very pleased to recognize the Singing Lancers and the positive image they project to their community.

I want to once again offer my personal congratulations to Mr. Florence, an exceptional music teacher, and to the following young men and women who experienced the rewards of their hard work the night they were chosen "Superior." Members of the Madrigal Singers are: Pam Albanese, Gretchen Arndt, Andy Barrett, Steph Daniels, Alisa Ersoz, Craig Goheen, Steph Hawk, Heidi Hisler, Jen Holder, Matt Horner, Cathy Javier-Wong, Robbie Johanson, Emily Mace, Tanya Moore, Scott Niehoff, Ty Oxley, Corey and John Perrine, Joe Steiner, and Becky Whittler. The members of the Ladies' Chamber Choir are: Beth Brown, Alison Cherryholmes, Rebecca Dosch, Randa Eid, Stephanie Evans, Katie Farrell, Kelly Good, Emily Henrich, Nadiyah Howard, Amy Huntington, Mary Kim, Christina Lewis, Jenn Montgomery, Sara Nahrwold, Nicole Orton, Courtney Parish, Jenny Platt, Laura Scheip, Damara Thompson, Nhien To, and Marika Tsanganelias. My very best wishes to this very special group of teens.

COMMENDING LIEUTENANT COLONEL MOSES WHITEHURST FOR SERVICES WELL-RENDERED

HON. WES COOLEY

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. COOLEY. Mr. Speaker, I rise today to recognize the service and the accomplishments of Lt. Col. Moses Whitehurst, Jr. who commanded Umatilla Depot Activity [UMDA], in Hermiston, OR from July 1993 to July 1995. Although continually challenged with mission changes, personnel reductions, dwindling resources, and short supplies, Moses Whitehurst performed his duties with vigor and professionalism while always meeting or exceeding requirements and expectations.

Lieutenant Colonel Whitehurst performed mission operations effectively as exhibited by successful completion of countless reviews and inspections. While under the command of Lieutenant Colonel Whitehurst, UMDA exceeded fiscal year 1994 conventional ammunition demilitarization forecasts by accomplishing 100 percent of the workload ahead of schedule. In addition, UMDA exceeded all expectations for shipment of ammunition stocks and general commodities by shipping more in fiscal year 1994 than had been shipped in the 4 previous years combined.

During Lieutenant Colonel Whitehurst's service, UMDA met or exceeded all BRAC time requirements. Through effective use of the one team approach, he has ensured a seamless transition for the operational control of the chemical stockpile mission from the Industrial Operations Command to the Chemical and Biological Defense Command.

By all accounts, Lt. Col. Moses Whitehurst has done an outstanding job of fulfilling all UMDA civic responsibilities and ensuring that a very positive public perception was maintained by the communities surrounding the installation. Under his command, UMDA was always well-represented at all meetings regarding CSEPP; in addition to hosting many local professional groups at UMDA, which included tours of the installation.

During his command tour at Umatilla Depot Activity, Lieutenant Colonel Moses Whitehurst set a tone of professionalism and teamwork. His exceptional leadership performance is a credit to himself, the Tooele Army Depot Complex, the Industrial Operations Command, and the U.S. Army. The people of the Second District and I are grateful to have had the benefit of his service.

TWA—NEW YORK TO LONDON

HON. WILLIAM (BILL) CLAY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mr. CLAY. Mr. Speaker, I would like to share with this body an issue which is of great importance to the St. Louis community and vital to the future of one of our major domestic airlines, Trans World Airlines. TWA, which maintains its operating hub at Lambert International Airport in St. Louis, needs to regain its longstanding New York-London route authority.

I have joined my St. Louis area colleagues in urging the Department of Transportation to pursue this issue in behalf of TWA at the ongoing bilateral negotiations with United Kingdom representatives. I would like to take this opportunity to share the text of a letter which St. Louis Mayor Freeman Bosley recently sent to the Transportation Secretary Fredrico Peña. This communication clearly articulates the vital importance of TWA's request for New York to London route authority.

DEAR SECRETARY PEÑA: I am submitting this letter as Mayor of St. Louis in strong support of Trans World Airlines regaining its long-standing New York-London route authority in the current bilateral negotiations with the United Kingdom. It is essential that TWA—one of the nation's great pioneers of international service—not be left out of these negotiations.

TWA maintains its major hub operation at St. Louis and employs over 12,000 Missourians. This proposed New York-London (Gatwick) service would not directly affect Missouri (TWA already flies between St. Louis and Long-Gatwick), but it would go far toward rebuilding an airline attempting to escape the financial damage and job loss caused by less than satisfactory management for over six years.

TWA had served London since 1950 from several large U.S. gateways and all but the St. Louis authority was sold in 1991 and 1992. St. Louis opposed such sales and unsuccessfully appealed the Department's approval. Under new energetic management. TWA is now seeking to return to the New York-London market which was wrongfully given up by prior management and whose transfer was wrongfully approved by the prior Administration. The present Administration should be fair to TWA and its new employee ownership move to redress that error and find a means to return to TWA its New York-London authority which was the backbone of its transatlantic route system. The current negotiations offer an ideal opportunity to accomplish this objective.

I also want to urge that TWA be granted St. Louis-Toronto authority as early as possible under the new U.S.-Canada agreement. St. Louis has been attempting for fifteen years to obtain nonstop St. Louis-Toronto service. The St. Louis area and the entire state of Missouri have an exceptionally strong community of interest with Toronto and Canada as a whole. Through all this period Toronto has continued to represent one of the major deficiencies in St. Louis air service. St. Louis clearly ranks very high on the nation's list of deprived cities as far as Canada is concerned. It is long past time to remedy this situation.

TWA's proposed St. Louis-Toronto service involves first nonstop operations to one of the largest U.S. service areas, would offer beyond traffic support unequaled by any other carrier and would provide the only effective means through one service proposal of meeting the Canada needs of both the Midwest and Western parts of the United States. TWA should definitely be one of the carriers selected for Toronto service in the second year of interim operation.

Further, St. Louis—in addition to its tremendous beyond area support—has a very strong traffic base in its own area. St. Louis is the nation's fifth ranking Fortune 500 company headquarters city and was ranked by World Trade magazine as one of the ten best U.S. cities for international companies. Substantial numbers of St. Louis area companies have major business ties to Canada. The Canadian business investment in the St. Louis area is similarly substantial and long standing in nature. According to Canadian data (Canadian Consulate, Chicago) total Missouri exports to Canada were $1.934 billion in 1993 and Canadian exports to Missouri were $1.435 billion in that year. Trade between Canada and Missouri is about the same as that between Canada and Mexico.

In the interest of building a sound airline industry, it is high time that the Department look away from the mega-carriers such as American, Delta, Northwest and United in favor of competition. TWA's London and Toronto requests are fully in accord with the Administration's consistent position that there should be increased competition—not less—in the airline industry.

Moreover, there are unique reasons for finding ways to strengthen TWA. The most important of these is the fact that TWA is under new ownership by its own employees. TWA's employees now own 45 percent of the voting stock of the carrier, an equity interest for which the employees are paying substantial amounts in hard earned wages. These employees have incredible dedication to the success of the carrier. This development—the employee-ownership reorganization of TWA—represented the first successful equity reorganization of this nature in the industry and constitutes a model for subsequent airline restructuring. It should be encouraged by the Department.

Further, TWA has demonstrated great determination to reform itself by completely overthrowing its old management and by developing new service concepts that truly attempt to met public needs. It was able to effect its major ownership and management change and come through a painful reorganization under Chapter 11 in an expeditious and successful fashion. It is now undergoing a further financial restructuring to strengthen its operation. These efforts by TWA's employee owners deserve to be recognized by the Department as a major favorable development in an airline industry that has seen too few favorable developments in recent years.

In achieving its turnaround, TWA has been able to preserve one of the great historic

names in the international aviation arena. TWA was a true pioneer of international operations and its name continues to command respect abroad. It is only right that the Department move to strengthen the carrier in the international arena and grant it strong London and Toronto routes which will materially aid its operations while at the same time meeting clear public needs. I appreciate your consideration of these matters which are vital to TWA's future.

Sincerely,

FREEMAN R. BOSLEY, JR.,
Mayor.

WORKING FAMILIES HEALTH ACCESS ACT

HON. NANCY L. JOHNSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 10, 1995

Mrs. JOHNSON of Connecticut. Mr. Speaker, as a step toward creating a national health care policy that assures continuity of coverage for all working Americans, I am introducing the Working Families Health Access Act of 1995 and invite your co-sponsorship.

The text of the bill follows:

H.R. —

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 "Working Families Health Access Act of 1995".

SEC. 2. PROMOTING THE CONTINUITY AND PORTABILITY OF HEALTH COVERAGE.

(a) IN GENERAL.—Subtitle D of the Internal Revenue Code of 1986 is amended by inserting after chapter 44 the following new chapter:

"CHAPTER 45—CONTINUITY AND PORTABILITY OF HEALTH COVERAGE

"Sec. 4986. Imposition of tax.
"Sec. 4987. Nondiscrimination based on health status.
"Sec. 4988. Limited use of preexisting condition exclusions.
"Sec. 4989. Guaranteed renewability of health insurance coverage.
"Sec. 4990. Relation to State standards.
"Sec. 4991. Definitions.

"SEC. 4986. IMPOSITION OF TAX FOR FAILURE TO MEET CONTINUITY AND PORTABILITY STANDARDS.

"(a) INSURED HEALTH PLANS.—

"(1) IN GENERAL.—In the case of any health insurance policy which fails to meet the applicable standards specified in this chapter at any time during a calendar year, there is hereby imposed a tax equal to 25 percent of the premiums received under such policy during the calendar year.

"(2) LIABILITY FOR TAX.—The tax imposed by paragraph (1) shall be paid by the issuer of the policy.

"(3) TREATMENT OF PREPAID HEALTH COVERAGE.—For purposes of this subsection:

"(A) IN GENERAL.—In the case of any prepaid health arrangement—

"(i) such arrangement shall be treated as a health insurance policy,

"(ii) the payments or premiums referred to in subparagraph (B)(i) shall be treated as premiums received for a health insurance policy, and

"(iii) the person referred to in subparagraph (B)(i) shall be treated as the issuer.

"(B) PREPAID HEALTH ARRANGEMENT.—For purposes of subparagraph (A), the term 'prepaid health arrangement' means an arrangement under which—

"(i) fixed payments or premiums are received as consideration for any person's agreement to provide or arrange for the provision of accident or health coverage regardless of how such coverage is provided or arranged to be provided, and

"(ii) substantially all the risks of the rates of utilization of services is assumed by such person or the provider of such services.

"(4) INSURANCE POLICY.—For purposes of this subsection, the term 'insurance policy' means any policy or other instrument whereby a contract of insurance is issued, renewed, or extended.

"(5) PREMIUM.—For purposes of this subsection, the term 'premium' means the gross amount of premiums and other consideration (including advance premiums, deposits, fees, and assessments) arising from policies issued by a person acting as the primary insurer, adjusted for any return or additional premiums paid as a result of endorsements, cancellations, audits, or retrospective rating.

"(b) SELF-INSURED HEALTH PLANS.—

"(1) IN GENERAL.—In the case of a self-insured health plan which fails to meet the applicable standards specified in this chapter at any time during a calendar year, there is hereby imposed a tax equal to 25 percent of the health coverage expenditures for such calendar year under such plan.

"(2) LIABILITY FOR TAX.—The tax imposed by paragraph (1) shall be paid by the plan sponsor.

"(3) SELF-INSURED HEALTH PLAN.—For purposes of this subsection, the term 'self-insured health plan' means any plan for providing accident or health coverage if any portion of such coverage is provided other than through an insurance policy.

"(4) HEALTH COVERAGE EXPENDITURES.—For purposes of this subsection, the health coverage expenditures of any self-insured health plan for any calendar year are the aggregate expenditures for such year for health coverage provided under such plan.

"(c) LIMITATIONS ON IMPOSITION.—

"(1) TAX NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No tax shall be imposed under this section on any failure for which it is established to the satisfaction of the Secretary that none of the persons liable for the tax knew, or exercising reasonable diligence would have known, that such failure existed.

"(2) TAX NOT TO APPLY TO CERTAIN FAILURES CORRECTED WITHIN 30 DAYS.—No tax shall be imposed by subsection (a) or (b) on any failure if—

"(A) such failure was due to reasonable cause and not to willful neglect, and

"(B) such failure is corrected during the 30-day period beginning on the 1st date any person liable for the tax knew, or exercising reasonable diligence would have known, that such failure existed.

"(3) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by this section to the extent that the payment of such tax would be excessive relative to the failure involved.

"SEC. 4987. NONDISCRIMINATION BASED ON HEALTH STATUS.

"(a) COVERAGE UNDER GROUP HEALTH PLANS.—A group health plan and a carrier offering health insurance coverage in connection with such a plan may not establish or impose eligibility, continuation, enrollment, or contribution requirements for an individual based on factors directly related to the health status, medical condition, claims experience, receipt of health care, medical history, disability, or evidence of insurability of the individual.

"(b) INDIVIDUAL COVERAGE.—

"(1) IN GENERAL.—A carrier offering health insurance coverage (other than in connection with a group health plan) may not establish or impose eligibility, continuation, or enrollment requirements for a qualifying individual (as defined in paragraph (2)) based on factors directly related to the health status, medical condition, claims experience, receipt of health care, medical history, disability, or evidence of insurability of the individual.

"(2) QUALIFYING INDIVIDUAL DEFINED.—For purposes of paragraphs (1), the term 'qualifying individual' means an individual who meets all of the following requirements:

"(A) The individual is in a period of qualifying previous coverage (as defined in paragraph (3)) which is at least 6 months long.

"(B) The individual is not eligible for coverage under any group health plan (including continuation coverage under section 4980B) and has not lost such coverage but for a failure to make required premium payments or contributions or due to fraud or misrepresentation of material fact.

"(C) If the individual's most recent coverage during the period of qualifying previous coverage under subparagraph (A) was health insurance coverage not in connection with a group health plan, such coverage was discontinued or terminated by the carrier only on the basis of—

"(i) a change in residence of the individual so that the individual no longer resided within a service area of a carrier with respect to such coverage, or

"(ii) a change in the individual's status so that the individual was no longer eligible for dependent coverage, if the individual previously was only eligible for such coverage as a dependent.

Nothing in subparagraph (C) shall be construed as preventing a carrier from waiving the application of such subparagraph during an annual open enrollment period or otherwise.

"(3) PERIOD OF QUALIFYING PREVIOUS COVERAGE DEFINED.—For purposes of this chapter, the term 'period of qualifying previous coverage' means the period—

"(A) beginning on the date an individual is enrolled under a group health plan or is provided health insurance coverage, and

"(B) ending on the date the individual is neither covered under a group health plan or covered under health insurance coverage (including coverage described in section 4991(2)(D)) for a continuous period of more than 2 months.

SEC. 4988. LIMITED USE OF PREEXISTING CONDITION EXCLUSIONS.

"(a) IN GENERAL.—A carrier offering health insurance coverage and a group health plan may impose a limitation or exclusion of benefits relating to treatment of a condition based on the fact that the condition is a preexisting condition (as defined in subsection (c)) only if the following requirements are met:

"(1) LIMITATIONS TO 3-MONTH LOCK-BACK.—The condition was diagnosed or treated during the period not more than 3 months before the date of enrollment for such coverage or under such plan.

"(2) LIMITATION ON EXCLUSION PERIOD.—

"(A) GENERAL RULE OF MAXIMUM OF 6-MONTH EXCLUSION.—Subject to paragraph (3), the limitation or exclusion extends for a period not more than 6 months (or 12 months in the case of a late enrollee described in subparagraph (B)) after such date of enrollment.

"(B) LATE ENROLLEE DESCRIBED.—

"(i) IN GENERAL.—Except as provided in clause (ii), a late enrollee described in this subparagraph with respect to a group health plan is an individual who becomes covered under the plan but who, at the time the individual first was eligible to elect such coverage, had elected not to be covered under the plan.

"(ii) EXCEPTION FOR INDIVIDUALS WITH CONTINUOUS COVERAGE.—An individual shall not be considered to be a late enrollee with respect to a plan if the individual establishes that, with respect to the period beginning on the date the individual first could have obtained coverage under the plan and until the date the individual was so covered, there was no period of more than 2 months during all of which the individual neither had health insurance coverage (including coverage described in subparagraph (C) or (D) of section 4991(2)) or was covered under any group health plan.

"(3) CREDIT FOR PREVIOUS QUALIFYING COVERAGE.—In the case of an individual who is in a period of qualifying previous coverage (as defined in section 4987(b)(3)) as of the date of enrollment for health insurance coverage or under the group health plan, the limitation or exclusion period under paragraph (2)(A) shall be reduced by the length of such period of qualifying previous coverage.

"(4) EXCEPTION FOR TREATMENT OF PREGNANCY.—The limitation or exclusion does not apply to treatment relating to pregnancy.

"(5) EXCEPTION FOR CERTAIN DEPENDENT COVERAGE.—

(A) NEWBORNS.—The limitation or exclusion does not apply to a child who has health insurance coverage (or is covered under a group health plan) as a dependent within 1 month of the birthdate until such time as the child does not have such coverage (or is not so covered) for a continuous period of more than 2 months.

(B) ADOPTED CHILDREN.—The limitation or exclusion does not apply (beginning on the date of adoption) to an adopted child who has health insurance coverage (or is covered under a group health plan) within 1 month of such date until such time as the child does not have such coverage (or is not so covered) for a continuous period of more than 2 months.

"(b) LIMITATION ON USE OF DELAYED COVERAGE IN LIEU OF PREEXISTING EXCLUSION LIMITATIONS.—

"(1) IN GENERAL.—A carrier offering health insurance coverage and a group health plan providing coverage, with respect to an individual, may delay the effective date of coverage of the individual beyond the first date of the month beginning after the date of election of the coverage only if the following requirements are met:

"(A) LIMITATION ON DELAY PERIOD.—Subject to paragraph (2), such additional delay does not extend over a period of longer than 2 months (or 3 months in the case of a late enrollee described in subsection (a)(2)(B)).

"(B) NO SUBSEQUENT APPLICATION OF ANY PREEXISTING EXCLUSION.—After the period of such additional delay, no limitation or exclusion described in subsection (a) may be applied.

"(C) NO PREMIUMS.—No premium or required contribution may be charged for the period before the effective date of coverage. Nothing in this paragraph shall waive the applicable requirements of subsection (a).

"(2) VOLUNTARY WAIVER.—The additional delay may extend over a period longer than the period specified under paragraph (1)(A) if the individual involved waives the protection provided under such paragraph.

"(c) PREEXISTING CONDITION DEFINED.—For purposes of this section, the term 'preexisting condition' means, with respect to coverage under health insurance coverage or under a group health plan, a condition which was diagnosed or treated for a condition, or for which a reasonably prudent person would have sought medical care diagnosis or treatment, within the 3-month period ending on the day before the date of enrollment (without regard to any delayed coverage period).

"SEC. 4989. GUARANTEED RENEWABILITY OF HEALTH INSURANCE COVERAGE.

"(a) IN GENERAL.—Except as provided in subsection (b), a carrier offering health insurance coverage shall guarantee that such coverage may be renewed or continued in force at the option of the policyholder or contractholder.

"(b) GROUNDS FOR REFUSAL TO RENEW.—

"(1) IN GENERAL.—Subject to paragraphs (3) and (4), a carrier offering health insurance coverage may cancel or refuse to renew such coverage—

"(A) for nonpayment of premium or contribution in accordance with the terms of the coverage;

"(B) for fraud or misrepresentation of material fact;

"(C) because of a general discontinuation or termination of coverage, but only if the carrier provides prior notice of such discontinuation or termination and if the conditions described in clause (i) or (ii) of paragraph (2)(A) are met;

"(D) in the case of coverage offered in connection with a group health plan, for failure of the plan to maintain participation rules consistent with paragraph (4); or

"(E) in the case of coverage that is continuation coverage under section 4980B, for loss of eligibility to continue such coverage.

"(2) CONDITIONS FOR DISCONTINUATION.—

"(A) IN GENERAL.—

"(i) NONDISCRIMINATORY SUBSTITUTION OF ALTERNATIVE COVERAGE.—The conditions described in this clause are the following:

"(I) The carrier is no longer offering health insurance coverage to new policyholders or contractholders.

"(II) The carrier is offering to the previously covered policyholder or contractholder the option to purchase any other health insurance coverage currently being offered to new policyholders or contractholders.

"(III) The discontinuation or termination of coverage and option to replace with other coverage is made uniformly without regard to the health status or insurability of any person provided health insurance coverage.

"(ii) GENERAL DISCONTINUATION OF COVERAGE IN A STATE.—The conditions described in this clause are that the carrier is discontinuing and not renewing all health insurance coverage within a class of coverage (as defined in subparagraph (B)) in a State.

"(B) CLASSES OF COVERAGE.—For purposes of subparagraph (A)(ii), each of the following is considered a separate class of health insurance coverage:

"(i) INDIVIDUAL COVERAGE.—Health insurance coverage not offered in connection with any group health plan.

"(ii) SMALL EMPLOYER GROUP COVERAGE.—Health insurance coverage offered to small employers (as defined by State law) in connection with any group health plan for covered employees and their dependents.

"(iii) OTHER GROUP COVERAGE.—Health insurance coverage offered in connection with a group health plan and not described in clause (ii).

"(3) APPLICATION OF GEOGRAPHIC LIMITATIONS TO COVERAGE PROVIDED THROUGH A NETWORK ARRANGEMENT.—

"(A) IN GENERAL.—Coverage under health insurance or under a group health plan that consists primarily of coverage through a network arrangement (as defined in subparagraph (B)) may be denied to individuals who neither live nor reside in the service area of the arrangement, but only if such denial is applied uniformly, without regard to the health status or the insurability of particular individuals.

"(B) NETWORK ARRANGEMENTS.—For purposes of subparagraph (A), the term 'network arrangement' means, with respect to a group health plan or under health insurance coverage, an arrangement under such plan or coverage whereby providers agree to provide items and services covered under the arrangement to individuals covered under the plan or who have such coverage.

"(4) MINIMUM PARTICIPATION REQUIREMENTS.—A carrier that offers health insurance coverage in connection with a group health plan that covers the employees of one or more employers may require that a minimum percentage of eligible employees of such an employer obtain such coverage if such percentage is applied uniformly to all such coverage offered to employers of comparable size.

"SEC. 4990. RELATION TO STATE STANDARDS.

"Nothing in this chapter shall prevent a State from establishing, implementing, or continuing in effect standards related to health insurance coverage (including the issuance, renewal, or rating of such coverage) if such standards are at least as stringent as the standards established under this chapter with respect to such coverage.

"SEC. 4991. DEFINITIONS.

"For purposes of this chapter—

"(1) CARRIER.—The term 'carrier' means—

"(A) a licensed insurance company;

"(B) an entity offering prepaid hospital or medical service plan;

"(C) a health maintenance organization; and

"(D) any similar entity which (i) is engaged in the business of providing a plan of health insurance or health benefits or services and (ii) is regulated under State law for solvency.

"(2) HEALTH INSURANCE COVERAGE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'health insurance coverage' means any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization group contract offered by a carrier.

"(B) EXCEPTION.—Such term does not include any of the following (or any combination of the following):

"(i) Coverage only for accident, dental, vision, or disability income, or any combination thereof.

"(ii) Medicare supplemental health insurance.

"(iii) Coverage issued as a supplement to liability insurance.

"(iv) Liability insurance, including general liability insurance and automobile liability insurance.

"(v) Workers' compensation or similar insurance.

"(vi) Automobile medical-payment insurance.

"(vii) Coverage providing wages or payments in lieu of wages for any period during which an employee is absent from work on account of sickness or injury.

"(viii) A long-term care insurance coverage, including a nursing home fixed indemnity policy (unless the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and of the Treasury, determines that such coverage is sufficiently comprehensive so that it should be treated as health insurance coverage.)

"(ix) Any coverage not described in any preceding clause which consists of benefit payments, on a periodic basis, for a specified disease or illness or period of hospitalization without regard to the costs incurred or services rendered during the period to which the payments relate.

"(x) Such other coverage as the Secretary of Health and Human Services, in consultation with the Secretaries of Labor and of the Treasury, determines is not health insurance coverage.

"(C) TREATMENT OF STATE RISK POOLS.—Except for purposes of sections 4987(b)(3), 4988(a)(2)(B)(ii), and 4988(a)(3), such term does not include coverage provided through a State risk pool, uncompensated care pool or similar subsidized program.

"(D) PUBLIC PLANS COUNTED FOR PURPOSES OF QUALIFYING PREVIOUS COVERAGE.—For purposes of sections 4987(b)(3), 4988(a)(2)(B)(ii), and 4988(a)(3), such term also includes coverage under any of the following:

"(i) The medicare program under title XVIII of the Social Security Act.

"(ii) A State plan under title XIX of such Act.

"(iii) A program of the Indian Health Service.

"(iv) The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) under title 10, United States Code.

"(v) Any other similar governmental health insurance program (including a program described in subparagraph (C)).

"(3) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning given such term in section 5000(b)(1), but does not include any type of coverage excluded from the definition of health insurance coverage under paragraph (2)(B) or (C) and does not include any plan unless at least one of the following requirements is met:

"(A) Any portion of the premium or benefits under the plan is paid by or on behalf of the employer.

"(B) An eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the employer for any portion of the premium.

"(C) The health benefit plan is treated by the employer, or any of the eligible employees or dependents, as part of a plan or program for the purposes of section 162, section 25, or section 106 of the Internal Revenue Code of 1986.

"(4) STATE.—The term 'State' includes the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by subsection (a) shall apply to individuals who commence health insurance coverage or coverage under a group health plan after the first day of the first month beginning more than 6 months after the date of the enactment of this Act.

(2) PLAN YEAR EXCEPTION.—Such amendments shall not apply to plan years ending before the first day referred to in paragraph (1).

(c) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by inserting after the item relating to chapter 44 the following new item:

"CHAPTER 45. Continuity and portability of health coverage."

SEC. 3. CHANGES IN COBRA CONTINUATION REQUIREMENTS.

(a) MORE AFFORDABLE COVERAGE THROUGH REQUIREMENT OF LOWER-COST HEALTH PLAN CHOICES.—

(1) IN GENERAL.—Section 4980B(f) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (1), by striking ", continuation coverage under the plan" and inserting "and as selected by the qualified beneficiary under this subsection, continuation coverage of the type described in subparagraph (A), (F)(i), or (F)(ii) of paragraph (2)";

(B) in paragraph (2)(A), by striking "The coverage" and inserting "Unless the coverage is the type of coverage described in clause (i) or (ii) of subparagraph (F), the coverage";

(C) in paragraph (2)(C)—

(i) in clause (i), by inserting "(or in the case of alternative continuation coverage described in clause (i) or (ii) of subparagraph (F), 69 percent or 52 percent, respectively, of such applicable premium)" after "for such period", and

(ii) in the last sentence by inserting ", '69 percent', or '52 percent'" after " '102 percent'" and by inserting ", '100 percent', or '75 percent', respectively,";

(D) by adding at the end of paragraph (2) the following new subparagraph:

"(F) TYPES OF ALTERNATIVE CONTINUATION COVERAGE REQUIRED.—

"(i) COVERAGE WITH TWO-THIRDS ACTUARIAL VALUE.—The type of coverage described in this clause is coverage which—

"(I) has an actuarial value (determined with respect to the similarly situated beneficiaries referred to in subparagraph (A)) of not less than ⅔ of the actuarial value (determined with respect to such beneficiaries) of the reference coverage, and

"(II) meets the requirements of clause (iii).

"(ii) COVERAGE WITH ONE-HALF ACTUARIAL VALUE.—The type of coverage described in this clause is coverage which—

"(I) has an actuarial value (determined with respect to the similarly situated beneficiaries referred to in subparagraph (A)) of not less than ½ of the actuarial value (determined with respect to such beneficiaries) of the reference coverage, and

"(II) meets the requirements of clause (iii).

"(iii) REQUIREMENTS RELATING TO GENERAL AVAILABILITY AND PREEXISTING CONDITIONS.—Coverage meets the requirements of this clause if the coverage—

"(I) is made available to all qualified beneficiaries who become eligible for coverage under this subsection after the effective date of this subparagraph, and

"(II) does not impose any restriction or limitation on coverage based on a preexisting condition unless such restriction or limitation could be imposed under the coverage described in subparagraph (A).

"(iv) REFERENCE COVERAGE DEFINED.—For purposes of this subparagraph, the term 'reference coverage' means, with respect to a group health plan, the costliest continuation coverage available under subparagraph (A) under the plan, excluding coverage in which an insignificant proportion of the eligible individuals is enrolled."; and

(E) by adding at the end of paragraph (4) the following new subparagraph:

"(D) COMPUTATION BASED ON FULL COVERAGE.—For purposes of this section, the applicable premium shall be computed based on the type of coverage described in paragraph (2)(A)."

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning on or after the first day of the first month beginning at least 6 months after the date of the enactment of this Act.

(b) CONTINUATION COVERAGE FOR CERTAIN FORMERLY COVERED DEPENDENT SPOUSES AND CHILDREN.—

(1) IN GENERAL.—Section 4980B(f) of such Code is amended by adding at the end the following new paragraph:

"(9) CAPTURE OF DELAYED DIVORCE OR SEPARATION.—

"(A) IN GENERAL.—For purposes of this section, if a covered employee disenrolls from coverage (or fails to renew coverage of) a qualified beneficiary within the 12-month period preceding the date of the divorce or legal separation of the employee from the employee's spouse, the divorce or separation shall be treated as a qualifying event described in paragraph (3)(C) and the loss of coverage shall be considered to be a result (and by reason) of such event.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a qualified beneficiary if—

"(i) the beneficiary waives the rights under such subparagraph, or

"(ii) the qualified beneficiary at the time of the qualifying event or at the time of the disenrollment or failure to renew coverage has coverage under a group health plan (other than by reason of this paragraph) if the plan does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary."

(2) TREATMENT OF PERIOD BEFORE DELAYED DIVORCE OR SEPARATION.—Subparagraph (D) of section 4980B(f)(2) of such Act is amended by adding at the end the following new sentence: "For purposes of applying any preexisting condition limitation or restriction, any period beginning on the date of the disenrollment or failure to renew coverage referred to in paragraph (9)(A) and ending on the date of the divorce or separation referred to in such paragraph shall not be treated as a break in coverage if such paragraph applies to the qualified beneficiary.".

(3) TREATMENT OF ANNULMENTS.—Section 4980B(g) of such Code is amended by adding at the end the following new paragraph:

"(5) TREATMENT OF ANNULMENT AS DIVORCE.—The term 'divorce' includes an annulment.".

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to divorces, legal separations, and annulments occurring more than 60 days after the date of the enactment of this Act.

(c) ELIMINATION OF TERMINATION OF CONTINUATION COVERAGE BY REASON OF MEDICARE ELIGIBILITY THROUGH END STAGE RENAL DISEASE.—

(1) IN GENERAL.—Subclause (II) of section 4980B(f)(2)(B)(iv) of such Code is amended by inserting "other than by reason of section 226A of such Act" after "the Social Security Act".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to covered employees and qualified beneficiaries

who become entitled to benefits under title XVIII of the Social Security Act pursuant to section 226A of such Act on or after the first day of the first month that begins after the date of the enactment of this Act.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, May 11, 1995, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 12

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Environmental Protection Agency, the Council on Environmental Quality, and the Agency for Toxic Substances and Disease Registry.

SD–192

10:00 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Secretary of the Senate, the Sergeant at Arms and Doorkeeper of the Senate, the Senate Legal Counsel, and the Senate Office of Fair Employment Practices.

SD–116

MAY 15

2:00 p.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Library of Congress, the Congressional Budget Office, and the U.S. Capitol Police.

SD–116

Governmental Affairs

Post Office and Civil Service Subcommittee

To hold hearings on Federal pension reform.

SD–342

2:30 p.m.

Armed Services

Personnel Subcommittee

Readiness Subcommittee

To hold joint hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the future years defense program, focusing on military family housing issues.

SR–222

MAY 16

9:00 a.m.

Agriculture, Nutrition, and Forestry

To hold hearings on the nominations of Karl N. Stauber, of Minnesota, to be Under Secretary of Agriculture for Research, Education, and Economics, and Eugene Branstool, of Ohio, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

SR–332

9:30 a.m.

Agriculture, Nutrition, and Forestry

To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on rural development and credit.

SR–328A

Armed Services

SeaPower Subcommittee

To resume hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the future years defense program, focusing on the requirements for continued production of nuclear submarines, submarine industrial base issues, procurement strategy, and associated funding.

SR–222

Commerce, Science, and Transportation

Science, Technology, and Space Subcommittee

To hold hearings to examine NASA's space shuttle and reusable launch vehicle programs.

SR–253

Energy and Natural Resources

To hold hearings to review Nuclear Regulatory Commission licensing activities with regard to the Department of Energy's civilian nuclear waste disposal program and other matters within the jurisdiction of the Nuclear Regulatory Commission.

SD–366

Finance

To resume hearings on the fiscal solvency of Medicare and the status of the program's delivery of health care services, focusing on methods to preserve and improve the Medicare program.

SD–215

Labor and Human Resources

Disability Policy Subcommittee

To resume hearings to examine proposed legislation relating to the education of individuals with disabilities.

SD–430

MAY 17

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings to examine the National Academy of Public Administration's study on the Environmental Protection Agency.

SD–G50

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Park Service, Department of the Interior.

SD–192

Energy and Natural Resources

Business meeting, to consider pending calendar business.

SD–366

Finance

To continue hearings on the fiscal solvency of Medicare and the status of the program's delivery of health care services, focusing on methods to preserve and improve the Medicare program.

SD–215

10:00 a.m.

Governmental Affairs

To hold hearings to examine proposals to reorganization of the Executive Branch.

SD–342

Joint Economic

To hold hearings to examine the use of the flat tax.

SD–106

2:00 p.m.

Armed Services

Acquisition and Technology Subcommittee

To resume hearings on S. 727, to authorize appropriations for fiscal year 1996 for military activities of the Department of Defense, and to prescribe military personnel strengths for fiscal year 1996, focusing on dual-use technology programs.

SR–232A

Select on Intelligence

To hold closed hearings on intelligence matters.

SH–219

2:30 p.m.

Appropriations

Defense Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on environmental programs.

SD–192

MAY 18

9:30 a.m.

Energy and Natural Resources

To hold hearings to examine the administration of timber contracts in the Tongass National Forest and administration of the Tongass Timber Reform Act of 1990.

SD–366

Rules and Administration

To resume hearings to examine management guidelines for the future of the Smithsonian Institution.

SD–106

Small Business

To hold hearings to examine the Small Business Administration's 7(a) business loan program.

SD–628

Indian Affairs

To hold oversight hearings on the recommendations of the Joint Department of the Interior/Bureau of Indian

Affairs/Tribal Task Force on Reorganization of the Bureau of Indian Affiars.

SR-485

10:00 a.m.

Governmental Affairs

To continue hearings to examine proposals to reorganize the Executive Branch.

SD-342

Judiciary

Business meeting, to consider pending calendar business.

SD-226

0:30 a.m.

Appropriations

Foreign Operations Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for foreign assistance programs.

SH-216

1:00 p.m.

Armed Services

SeaPower Subcommittee

To resume hearings on S. 727, authorizing funds for fiscal year 1996 for military activities of the Department of Defense and the future years defense program, focusing on the Marine Corps modernization programs and current operations.

SR-232A

2:00 p.m.

Appropriations

Labor, Health and Human Services, and Education Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the National Institutes of Health, Department of Health and Human Services.

SD-192

Appropriations

Treasury, Postal Service, and General Government Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Treasury Department, and the Federal Election Commission.

SD-192

Energy and Natural Resources

Energy Production and Regulation Subcommittee

To hold hearings on proposed legislation to extend the deadlines of certain hydroelectric projects, including S.283, S.468, S.543, S.547, S.549, S.552, S.595, and S.611.

SD-366

MAY 19

9:30 a.m.

Appropriations

VA, HUD, and Independent Agencies Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Housing and Urban Development.

SD-192

10:00 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Architect of the Capitol, and the Government Printing Office.

SD-116

MAY 22

2:00 p.m.

Governmental Affairs

Post Office and Civil Service Subcommittee

To resume hearings on Federal pension reform.

SD-342

MAY 23

9:30 a.m.

Agriculture, Nutrition, and Forestry

To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on Federal nutrition programs.

SR-328A

Appropriations

Defense Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on financial management.

SD-192

Commerce, Science, and Transportation

Science, Technology, and Space Subcommittee

To hold oversight hearings on NASA's Space Station Program.

SR-253

Energy and Natural Resources

Forests and Public Land Management Subcommittee

To hold hearings on S. 620, to direct the Secretary of the Interior to convey, upon request, certain property in Federal reclamation projects to beneficiaries of the projects and to set forth a distribution scheme for revenues from reclamation project lands.

SD-366

Indian Affairs

To hold hearings on S. 479, to provide for administrative procedures to extend Federal recognition to certain Indian groups.

SR-485

2:30 p.m.

Energy and Natural Resources

Parks, Historic Preservation and Recreation Subcommittee

To hold hearings to review the Department of the Interior's programs, policies and budget implications on the reintroduction of wolves in and around Yellowstone National Park.

SD-366

MAY 24

9:30 a.m.

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the United States Fish and Wildlife Service, Department of the Interior.

SD-192

10:00 a.m.

Agriculture, Nutrition, and Forestry

Research, Nutrition, and General Legislation Subcommittee

To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on research and the future of U.S. agriculture.

SR-328A

MAY 25

9:30 a.m.

Energy and Natural Resources

Forests and Public Land Management Subcommittee

To hold hearings on property line disputes within the Nez Perce Indian Reservation in Idaho.

SD-366

10:00 a.m.

Agriculture, Nutrition, and Forestry

Marketing, Inspection, and Product Promotion Subcommittee

To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on Federal farm export programs.

SR-328A

Appropriations

Military Construction Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for military construction programs of the Department of Defense, focusing on Army and certain Defense agencies.

SD-192

Finance

Social Security and Family Policy Subcommittee

To hold hearings to examine the financial and business practices of the American Association of Retired Persons (AARP).

SD-215

2:00 p.m.

Energy and Natural Resources

To hold hearings on S. 638, to authorize funds for United States insular areas.

SD-366

MAY 26

10:00 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the General Accounting Office, and the Office of Technology Assessment.

SD-116

JUNE 6

9:30 a.m.

Agriculture, Nutrition, and Forestry

Forestry, Conservation, and Rural Revitalization Subcommittee

To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on resource conservation.

SR-328A

Appropriations

Defense Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on intelligence programs.

S-407, Capitol

Appropriations

Interior Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of the Interior.

SD-138

Energy and Natural Resources
Energy Production and Regulation Subcommittee
To hold hearings on S. 708, to repeal section 210 of the Public Utility Regulatory Policies Act of 1978.
SD–366

JUNE 7

9:30 a.m.
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the National Service and the Selective Service System.
SD–192

10:00 a.m.
Judiciary
Youth Violence Subcommittee
To hold hearings to examine the welfare system's effect on youth violence.
SD–226

JUNE 13

9:30 a.m.
Agriculture, Nutrition, and Forestry
Production and Price Competitiveness Subcommittee
To hold hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on commodity policy.
SR–328A

Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on health programs.
SD–192

JUNE 15

9:30 a.m.
Agriculture, Nutrition, and Forestry
Production and Price Competitiveness Subcommittee
To resume hearings on proposed legislation to strengthen and improve United States agricultural programs, focusing on commodity policy.
SR–328A

JUNE 20

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense, focusing on counternarcotic programs.
SD–192

JUNE 27

9:30 a.m.
Appropriations
Defense Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1996 for the Department of Defense.
SD–192