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PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

SENATE—*Thursday, March 21, 1996*

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Gracious Lord, You know what is ahead today for the women and men of this Senate. Crucial issues confront them. Votes will be cast and aspects of the future of our Nation will be shaped by what is decided. And so, we say with the Psalmist:

Show me Your ways, O Lord; teach me Your paths. Lead me in Your truth and teach me, for You are the God of my salvation; on You I wait all the day.—Psalm 25:4–5.

'I delight to do Your will, O my God, and Your law is within my heart.—Psalm 40:8.

We prepare for the decisions of today by opening our minds to the inflow of Your spirit. We confess that we need Your divine intelligence to invade our thinking brains and flood us with Your light in the dimness of our limited understanding.

We praise You, Lord, that when this day comes to an end we will have the deep inner peace of knowing that You heard and answered this prayer for guidance. In the name of Him who is the Truth. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Washington State is recognized.

SCHEDULE

Mr. GORTON. Mr. President, for the information of our colleagues, the Senate today will immediately resume consideration of the conference report to accompany the product liability bill for a period of 3 hours of debate, equally divided.

At 12 noon there will be two consecutive rollcall votes. The first will be on the adoption of the product liability conference report, and that vote will be immediately followed by a vote on the motion to invoke cloture on the motion to proceed to Senate Resolution 227, a resolution concerning the Special Committee To Investigate Whitewater and Related Matters.

Following those votes, the Senate will resume consideration of the grazing bill, and there will be 75 minutes for debate remaining on the Bumpers amendment, amendment No. 3556, as modified. A rollcall vote will occur on or in relation to that amendment immediately upon the expiration or yielding of debate time. Other votes are expected, and a late night session is possible in order to complete action on that grazing bill.

COMMONSENSE PRODUCT LIABILITY LEGAL REFORM ACT OF 1996—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. DEWINE). Under the previous order, the Senate will now proceed to the conference report to accompany H.R. 956. The time between now and 12 noon is equally divided.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 956), a bill to establish legal standards and procedures for product liability litigation, and for other purposes, having met, after full and fair conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, as we proceed toward the climax of the debate on product liability and a vote on the bill at noon, I believe it appropriate to state what I think the issues in this debate truly are. The question involved in whether or not we wish to reform the product liability litigation system of this country has, I think, primarily to do with the products that are available to the American people, the rapidity with which new products are researched, developed, introduced, and marketed, and the cost of those products to the people of the United States.

In each of these cases, the closely related question, of course, is the system of justice by which people who believe that they have been wronged get a determination as to whether or not such a wrong has been committed and how much compensation should be granted when a wrong is determined.

Our present legal system serves well neither of these goals. We have, in many areas, a frequent reduction in the number of companies that are willing to engage in vitally important businesses: a reduction from something like a dozen to one, in the producers of serum for whooping cough; a reduction from 20 to 2, in the number of companies willing to produce helmets, football helmets, for players, whether professional or college or high school or otherwise.

There is a constant fear on the part of product developers that the unpredictable costs of product liability litigation, whether or not it is successful, are simply greater than any potential profits that can be gained from the development and marketing of a product. For example, Science magazine has identified three U.S. laboratories that suspended or canceled research on promising AIDS vaccines. Union Carbide funded and developed a suitcase-size kidney dialysis unit for home use. It was sold to a foreign corporation after the company determined that potential liability risks under the present system of law made the product uneconomical.

Another company developed a phosphate fiber substitute for asbestos, the subject, obviously, of a tremendous amount of litigation. Not only was the product safe, it was biodegradable and environmentally sound. Although the product could have generated an estimated $100 million a year in revenues, the company concluded that plaintiffs' attorneys would make the product a target for expensive legal claims, and it was therefore too risky to market.

Another company developed a chemical process that would speed up the

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

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natural bacterial decomposition of hazardous materials and might have been used to clean up hundreds of leaking underground storage sites. Despite its successful demonstration at several sites, the new technology was abandoned because the risk from potential lawsuits was too great.

In addition, even those companies that have been willing to stay in a particular business have been forced to increase the charges for the products they market, sometimes astronomically, in order to cover their cost of product liability litigation. Lederle Laboratories, which is now the lone maker of the DPT vaccine, all other manufacturers having abandoned the field, raised its price per dose from $2.80 in 1986 to $11.40 in 1987 to pay for the cost of lawsuits. One other company does continue to produce, solely out of a feeling of social responsibility.

This chart behind me indicates the litigation tax cost of a number of products produced and marketed in the United States: almost $24 for an 8-foot aluminum ladder; $3,000 for a heart pacemaker; $170 for a motorized wheelchair; 18 cents for a regulation baseball. There are example after example of the added costs to American consumers to pay for the lottery that is product liability litigation today.

What do we have in the litigation system itself? We have a system that is truly a lottery, one in which the average small claimant with a very minor injury is likely to recover much more than that person's actual losses, while the average seriously injured individual recovers much less, with a few lucky ones in a few States with high punitive damage award histories receiving much more. But the bottom line, the total cost, is that for every dollar which the system itself costs, every dollar that goes into the product liability litigation system, well under 50 cents goes to the victim. Mr. President, 50 cents or more goes to the lawyers, and an additional amount in transaction costs for related professions. There is no wonder the defense of the present system is so fierce.

So this bill is designed to do two things. It is designed, to a certain degree, to make more uniform and predictable the way in which the product liability litigation or claim system will work; to make it more just, actually to increase claimants' rights in some areas, like the statute of limitations; to reduce the cost of litigation and the overall transaction costs; to restore the competitiveness of American industry; to provide additional incentives for research, to develop, to offer for sale in the market widely the kinds of new and better medical devices, mechanical products, sporting goods that we, as Americans, have come to expect.

No one else in the world has a system like ours. No one else has a system more expensive, no one else has a system that so discourages research and development and marketing of new products.

Finally, Mr. President, we already have an example of how legislation like this works in the real world. In August 1994, less than 2 years ago, this Congress passed and this President signed an 18-year statute of repose for piston-driven aircraft, small aircraft. An industry that had almost been driven out of the United States—famous companies like Piper went into bankruptcy and others like Cessna, with barely one-tenth of the production that they had a decade earlier because of the cost of litigation—has now begun a recovery, a recovery which has proceeded much more rapidly, I think, even than the sponsors of that bill hoped, but one which is symbolized better than anything else by the construction of a new plant for Cessna at a cost of some $40 million to employ some 2,000 men and women at highly skilled, first-rate jobs, producing high-quality private aircraft for American purchasers.

This kind of legislation works, Mr. President. It works for the economy, it works for our consumers, it works for our system of justice. It should be passed and should become law.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I wonder if the Senator from South Carolina will yield me 15 minutes.

Mr. HOLLINGS. I will be delighted to yield the distinguished Senator 15 minutes.

Mr. KENNEDY. Mr. President, just in terms of schedules, I ask unanimous consent that the Senator from California be recognized for 15 minutes for her comments at the conclusion of my remarks.

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

Mr. KENNEDY. Mr. President, I think it is only appropriate that we look at the context in which this legislation has been presented to the Senate. Others have described the bill in great detail, and, if time permits, I will mention the various provisions in the bill that I find most objectionable. But I think this body and the American people ought to understand in a comprehensive way what is happening to consumer protections during the course of this Congress in this and other bills.

This bill is supported by a number of big business, special interest groups who have advanced a series of legislative and regulatory initiatives designed to protect those interests.

We cannot just look at this legislation in a vacuum, Mr. President. For example, we have to look at what is happening in the Appropriations Committees, where the appropriators are cutting back on inspections by the various agencies of Government responsible for protecting health and safety in the workplace. In the Occupational Safety and Health Administration, there is a 20-percent reduction in enforcement. In the Environmental Protection Agency, there is a 25-percent reduction in enforcement. The Consumer Product Safety Commission has been cut and is now at its lowest level of enforcement funding since 1972. Even the National Transportation Safety Administration is facing cuts, and that is an agency whose total enforcement budget is only about $8 million to begin with.

What is happening? The same forces that are supporting this tort-related legislation are trying to reduce protection for the American worker and the American consumer in the regulatory agencies by denying adequate enforcement of existing regulations.

Second, these same forces are proposing sweeping changes in the landmark legislation that established the regulatory agencies. In the Labor and Human Resources Committee, for example, last week we considered a bill to weaken the Occupational Safety and Health Act, and next week we're moving on to the Food and Drug Administration. In the OSHA bill, 90 percent of all the companies would be excluded from any kind of inspection at all. That so-called reform bill would reduce the penalties and reduce the kinds of enforcement mechanisms that would be available to OSHA.

So you have the cutbacks in inspections and you have the efforts by the same interests to reduce the effectiveness of the enforcement tools available to OSHA, FDA, EPA, and these other agencies. And at the same moment that is happening, we are presented with this product liability legislation. Anybody who believes that we are considering this in a vacuum does not understand what the legislative process is all about.

Nor are the limits on tort liability in this bill the only ones under consideration in this Congress. The Republican leadership in the House of Representatives has added medical malpractice liability limits to the bipartisan bill that Senator KASSEBAUM and I introduced. We will have a chance to debate that next month. And it was not long ago that we were debating the loser pays concept, an antiquated system used in Great Britain which is now being abandoned there because it fails to protect the consumers in that country. And no doubt we will again face proposals to create an "FDA Defense" under which medical devices or pharmaceuticals approved by the FDA would be immune from lawsuits, no matter how recklessly they are manufactured. How long are we going to have to wait for that particular proposal? And the list goes on and on.

So, Mr. President, we have to ask ourselves: What are the two major protections for American consumers?

They are the tort system and regulatory protection. Those are the twin pillars under which the American people are protected. They are the twin pillars that assure us of the safest food, the safest water and the safest consumer products available. They are the twin pillars for the protection of the American worker in the workplace and against environmental hazards.

But both pillars are under assault. That is the context in which this bill comes before the Senate.

The other context in which we operate is a Republican Congress that has told us over and over again that Washington does not know best. But in the tort area, which has been recognized for over 200 years as being a State prerogative, its a different ballgame. I suppose our good friends who are proposing this bill say, "All right, Washington knows best on this one."

Well under this bill, it appears that Massachusetts does not know best. Because even though my State legislature has decided that Massachusetts consumers should have the benefit of no statute of repose, this bill is going to impose a Federal 15-year period of repose on them. So there is going to be fewer protections for the people of Massachusetts because Washington knows best. Any State that has provided additional kinds of protections for their consumers, they are out of business.

We have been listening to a lot of speeches in the last year and a half about how Washington does not always know best, there is local knowledge, States can fulfill their responsibilities to the people. I hope we will hear a diminution of the number of those speeches, because what in this particular proposal it turns out that the special interests, the special business interests, know what is best for the American consumer. That is hogwash, Mr. President, absolute hogwash.

The American consumer wants to know who is going to be on their side. They want a safe workplace, safe food, inspections to ensure that we are going to have clean air, clean water, and a safe transportation system.

All those are under assault in this Congress, and now in this product liability bill we are going to immunize the major companies that may even willingly or knowingly commit grievous negligence. In 15 years after they put a ticking time bomb on the market they are going to be immunized under this statute of repose. So, Mr. President, we should understand that this really is not about the research costs. This is not about health and safety costs to the consumer.

What about those 2,700 women who died from perforated uteruses from the Dalkon shield before we passed the medical device legislation? We had those hearings. It was not long ago. You talk to individual after individual who appeared at those hearings and they say, "Why didn't someone do something to protect us? Why didn't someone speak out?" This is the responsibility of Government. Individual citizens have limited resources. They do not have the great financial resources to protect their interests alone.

So, Mr. President, I agree with those who say to the consumer—beware, beware. This legislation has a head of steam. It is bad enough. But, my friends, this is just the camel's nose under the tent with regard to the attack on consumer protections in this country.

For that reason, and for all of the reasons that have been outlined in considerable detail in my statement which I will include in the RECORD, I hope this bill will be rejected in the Senate. And I admire the President of the United States for standing up against the special big business interests. He understands the anticonsumer context in which this bill may come before him. He understands what I am saying about the camel's nose under the tent. He understands that the next bill he sees may include medical malpractice liability limits.

According to the Harvard public health study, tens of thousands of people died in hospitals in this country last year from negligence in the medical system. We will have an opportunity to debate that issue in the coming months.

So, Mr. President, this is a matter of fundamental protection of American consumers. These extreme regulatory reform and tort reform bills are poised to deprive the American people of the safest food in the world, the safest air and water in the world and the safest products on the market. We must not sacrifice the interests of the American consumer.

If we accept this bill, Mr. President—and if we did not have a President with the guts to stand up and veto it—we would be retreating on our commitment to the American consumer to protect them from death and serious bodily injury. I hope this bill is rejected, and I ask that the text of my prepared statement, be printed in the RECORD, along with an editorial from today's New York Times.

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

STATEMENT OF SENATOR EDWARD M. KENNEDY ON H.R. 956 THE PRODUCT LIABILITY CONFERENCE REPORT

I strongly oppose the conference report on the product liability bill, and I urge my colleagues to reject it, because it constitutes an unacceptable threat to the health and safety of American consumers.

This is not "common sense legal reform." It is special interest legislation of the worst kind. Our Republican friends pretend that it is designed to end current abuses of the legal system. In reality, this bill panders to the worst instincts of big business. President Clinton has promised to veto this bill, and it eminently deserves the veto it will get.

This bill has three grave flaws. It arbitrarily caps punitive damages against the most reckless manufacturers of deadly products. It nullifies the sound common law principle of joint and several liability. And it preempts State law in ways that are both unwise and unfair.

Even worse, this bill does not come before the Senate in isolation. It is part of a shameful pattern. It comes before the Senate at a time when the Republican Congress is waging an all-out assault on the health and safety of the American public:

So-called regulatory reform bills would drastically weaken the existing rules that protect public health and safety.

Republican appropriations bills would drastically slash enforcement funds for agencies that carry out the current health and safety laws.

And now, the entire tort system, which provides basic legal protections for the public against defective products, is under Republican attack in this bill.

This is not a liability reform bill at all—it is an avoid-liability bill. It is part of a Republican triple play against the health and safety of the American people by irresponsible business interests.

The strategy is all too clear—undermine the Government's ability to protect health and safety by slashing agency rules and budgets, then slam the courthouse door in the face of all those harmed by the lack of consumer protections.

Wise regulation, effective enforcement, and access to the courts are three basic pillars of consumer protection. Regulation is intended to prevent the manufacture of defective products in the first place. Enforcement keeps business honest. Tort law guarantees adequate remedies for victims of dangerous and unsafe products when regulation and enforcement fail.

The same business interests who support this bill are also urging Congress to weaken the regulatory protections and defund enforcement.

It is ironic that the many Republican supporters of this bill who preach respect for the States refuse to practice what they preach. This legislation is intentionally designed to ride roughshod over State law.

For the past year and a half, we have heard a great deal from the Republican majority about States' rights. On issues such as welfare, education and crime, the Republican majority says it wants to return power to the States.

But when it comes to making sure that big business is protected from lawsuits brought by injured consumers, suddenly "Washington knows best."

Tort law is traditionally a State responsibility. In fact, in recent years, many State legislatures have enacted genuine reforms to address the problems of frivolous lawsuits and excessive damage awards. Federal intervention is completely unnecessary—and in this case, counter-productive.

This bill is also very different from the securities litigation reform bill enacted earlier this year, which I supported. The integrity of the stock market is clearly a Federal concern, and Congress has legislated in that area for over 60 years. The field of product liability law, in contrast, has been the province of State legislatures for over 200 years. There is no compelling reason for substituting the judgment of Congress for the judgment of elected State officials and the State

courts where the vast majority of these cases are resolved.

Our specific objections to this bill are numerous and serious. It denies adequate compensation to victims of defective products, and undermines necessary incentives for manufacturers to produce safe products.

The cap on punitive damages will limit the ability of the courts to punish the most flagrant conduct by reckless manufacturers. Punitive damages serve a valid purpose by deterring wrongful conduct that injures innocent victims. Such damages are especially justified as a deterrent against manufacturers who engage in intentional wrongful conduct, or who are recklessly indifferent to the safety of others. They should not be let off with a slap on the wrist. Such extreme misconduct must be fully punished in a manner that creates a clear deterrent to future wrongdoing.

The so-called "waiver" in the conference report is supposed to permit courts to exceed the cap in flagrant cases. But there is serious doubt about the constitutionality of that provision under the seventh amendment. If it is struck down, all that is left will be a rigid Federal cap on damages.

The nullification of the common law principle of "joint and several liability" is also unacceptable. It will severely hamper the ability of innocent victims to obtain compensation for their injuries. For at least 100 years, courts and State legislatures have recognized the unfairness of forcing an innocent party to bear the cost of other people's negligence, if one or more of the wrongdoers are available to pay compensation. That is a sensible rule, and Congress should not undermine it.

Proponents of Federal product liability reform say they want national standards for goods that are sold across State lines. But the conference report before us achieves no such uniformity. It preempts State laws in an uneven and unfair manner.

Punitive damage laws favorable to plaintiffs will be replaced by the new Federal standard. But laws prohibiting punitive damages altogether will stand. Similarly, the bill creates a 15-year Federal statute of repose, but permits State statutes of shorter length to remain in effect.

The end result is not uniformity, but unfairness. This bill is rigged to benefit negligent manufacturers and their insurance companies, while ignoring injured plaintiffs and the millions of American consumers who will no longer be protected adequately from dangerous and defective products.

All of these flaws were present in the Senate bill that many of us opposed. But the anticonsumer bias of this legislation became even worse after the conference with the House of Representatives.

For example, the Senate bill contained a 20-year statute of repose, but the conferees have adopted a 15-year period. As a result, after 15 years, manufacturers of even the most defectively designed or recklessly produced products are immunized from liability and will get off scot-free, no matter how much injury their products may cause.

In addition, types of products that qualify for this blatant protection are expanded dramatically. In the Senate bill, only workplace machinery was covered. But now, all durable goods, including common household products, are given this unjustified protection.

Massachusetts currently has no statute of repose, so this bill represents a major loss of protection for consumers in my State.

When the Senate debated this bill last year, I spoke at length in opposition to medical malpractice amendments. I am pleased that the conference report does not include such amendments. Nor does it include the so-called "FDA defense" in the House bill, which would prevent punitive damages in cases involving drugs or medical devices approved by the FDA.

But the bill does apply to manufacturers of drugs and medical devices, just as it applies to other products. The cumulative effect of the many anticonsumer provisions in the bill is to protect these manufacturers at the expense of the health and safety of the people who rely on these products.

This bill is nonsense, not common sense. It pretends to support the legitimate goals of reducing frivolous litigation and improving the civil justice system. In reality, it is special interest legislation that denies fair compensation to victims of negligence and limits the ability of the tort system to deal effectively with gross misconduct by business.

If this bill came off the factory assembly line, it would be labeled "unsafe for human use." And if the principle of quality control applies in the United States Senate, this bill would be soundly rejected. It is a sweetheart deal for business and insurance interests, and a raw deal for the public interest.

[From the New York Times, Mar. 21, 1996]

THE ANTI-CONSUMER ACT OF 1996

The Senate is preparing to vote today on a pernicious piece of anti-consumer legislation masquerading as product liability "reform." The measure is little more than a bipartisan gift to manufacturers and trade associations that supplemented their lobbying and generous campaign contributions with misleading propaganda exaggerating the problem of high verdicts. The bill would arbitrarily cap the punitive damages that juries may award—dangerously weakening the ability of the civil justice system to punish, and thereby deter, the reckless manufacture or sale of unsafe products.

If a majority of senators will not heed legitimate concerns about the measure's rollback of consumer protection, President Clinton must be prepared to make good on his veto threat.

The bill is a convenient exception to Capitol Hill's prevailing philosophy of devolving power to the states. It would compel all states, even in their own courts, to limit punitive damages. The phony rationale given is the need to create a single national commercial standard. But that standard would be applied only when it would benefit the manufacturers. The bill would override the product liability laws of states that allow unlimited punitive damages, for example, but it would impose no such damages on states that do not now have them.

Under the measure, plaintiffs who sue successfully for farm from faulty products could be compensated, as they should be, for medical expenses, lost wages, damaged property and other actual damages. But punitive damages, which are awarded by juries in cases of egregious misconduct, would be limited in most cases to $250,000 or two times actual damages, whichever is greater. That is hardly enough money to serve as a deterrent to major corporations.

Senator John D. Rockefeller 4th of West Virginia, a Democratic architect of this attack on civil justice, has suggested that President Clinton is trying to scuttle the bill to reward major campaign contributors, like trial lawyers. True, the American Association of Trial Lawyers has been one of Mr. Clinton's strongest political and financial backers. But by now it is laughable for Mr. Rockefeller to make purity an issue, given the far greater sums tossed into this fight by the powerful business interests amassed on the other side.

"For irresponsible companies willing to put profits above all else, the bill's capping of punitive damages increases the incentive to engage in the egregious misconduct of knowingly manufacturing and selling of defective products," Mr. Clinton said last week. On the merits, the President was right.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

I want to thank the Senator from Massachusetts for explaining, in his usual way, why this bill deserves to be defeated. Explaining that it is, in fact, part of a pattern of this Congress which continually brings up legislation that does not make life better for people, but in fact, puts them at risk. In fact, puts them at risk, whether it is cutting, as the Senator said, enforcement funds from the Environmental Protection Agency, or weakening our laws that have worked well to bring us the safest products in the world.

Mr. President, I come to this debate by asking a very straightforward question. I am not an attorney, and I tend to look at things in a different way. This is the question I ask: If a young woman, say age 21, is working in a factory and a faulty machine blows up in her face and she is disfigured beyond belief for the rest of her life, should the company who made that faulty product be penalized in such a way that they, and for that matter no other company, will ever make such a faulty product again? I say yes. I say yes.

The company that made that faulty product, and as you will see in many cases, knew they were doing it, should face damages that act as a deterrent for the future. This bill does just the opposite. It will let a company that made such a product, and other companies that might make such a product, off the hook. If we pass this bill, such a company, which might well have profits in the billions of dollars, will be given the equivalent of a slap on the wrist. Because those punitive damages meant to punish them—that is what punitive damages mean, punishment—will be so low they will not be large enough for them to care. Those are the brutal and cold facts. I wish they were not true, but they are true.

I have heard many businesses use words like this: "Oh, well, it is just a cost of doing business." "Just a cost of doing business." In other words, they will factor in lawsuits that go against them into their bottom line. I think the Senator from Washington has proved the point. They factor it into their bottom line. He shows it on his chart.

How cold can you get? If we cap punitive damages, as is put forth in this bill, we are taking the safest system in

the world for consumers, changing it, and putting people at risk.

There are other problems in this bill that deal with the statute of repose. Some machinery has a lifetime of 30, or 40 years. In 15 years, those companies are completely off the hook under this bill.

I also join with the Senator from Massachusetts in thanking our President. He is taking the heat on this one. He is standing up for the consumers. He is standing up for future victims. He is standing up so that we will not have so many victims of faulty products.

I want to give you some examples of actual cases. We are going to take the case of the Pinto automobile, and a young man named Richard Grimshaw. The exploding Pinto tank is a very clear example of what I am talking about. The gas tank exploded and burned in rear-end collisions. Many of us remember this. The company knew this was a problem. It all came out in court. But they sold the car anyway after they did a cost-benefit analysis and found out it would save them $21 million to delay the corrections for 2 years.

What happened when that fatal decision was made? A 13-year-old boy from my State, Richard Grimshaw, was badly burned in a rear-end accident while driving from Anaheim to Barstow. In the words of the California State court judge who presided over Richard's lawsuit, he suffered "ghastly" burns over 60 percent of his body, had whole fingers burned off, and required 60 surgeries over a 10-year period.

That was 25 years ago. That tragic accident is still with Richard. For the rest of his life, it will be with Richard. Is that the kind of world we want to encourage, where a company figures it is more cost effective to delay fixing a dangerous product than to risk a lawsuit? I hope not. Yet, if this bill passes, my friends, that is what is going to happen in the boardrooms across America.

Now, not all people in business fall into that category, but unfortunately we have got to look at history, my friends, and learn from it. The memos clearly showed in the Pinto case that a calculated decision was made to delay fixing that car.

Let me read from the pen of the California State judge who upheld that award. In part, "Punitive damages remain the most effective remedy for consumer protection against defectively designed mass produced articles." "* * *. Punitive damages thus remain the most effective remedy." What does this bill do? It guts that. The court concluded, "Ford could have corrected the hazardous design defects at minimal cost but decided to defer defection of the shortcomings by engaging in a cost-benefit analysis, balancing human lives and limbs against corporate profits."

Mr. President, are we going to ignore this judge's warning and turn back the clock to a time when callous companies ruined the lives of children, like that boy in Barstow, because of their bottom line? God, I hope we do not do that. If we do, in this particular Congress, I hope this President sticks with it and vetoes this bill.

Did you ever hear about the baby crib story? Another example of a situation that happened in California in the 1970's. A baby crib company produced a dangerous crib where side slats would strangle a baby trying to climb out. Six babies were strangled and the company stopped selling the crib, but it refused to warn the existing owners that there was a problem. They refused to do that. So the parents of Gail Crusan, she was 13 months old, did not know it was a dangerous crib. The company even refused a request by the Consumer Product Safety Commission to issue a national press release. It took an award of $475,000 in punitive damages against the company to finally get them to notify parents who had bought that crib. Punitive damages did what the Government could not do. It caused the manufacturer to warn parents that their children were in cribs that could kill them.

What are we going to do? We are going to make it possible for future companies to put our children at risk. I do not want to go back to those days, Mr. President. The proponents of this bill want us to substitute the long arm of the U.S. Senate and the Congress for the local jury of peers who sit in a courtroom.

Again, I back up what my colleague from Massachusetts says. State control, local control, give them the welfare, give them the Medicaid, cancel national nursing home standards, let the local people decide—that is what we hear out of the Republicans in this Congress, day in and day out. But when it comes to this, protecting consumers, we are going to pass a weaker law and force it on the States? Not on my watch. Not if I can help it. And not on this President's watch. Not if he can help it.

I cannot believe the selective logic that we hear around here. When it suits this Republican Congress, they are all for shipping things back to the States. But when it is in their interest, keep the control in Washington. Boy, I tell you, there is not much shame about that. It simply does not add up.

Now, we hear talk about special interests. Face it, there are special interests here. There are the lawyers on the one side and there are the corporations on the other. So I want to look at who does not have an ax to grind. Who are they? Let me tell you some of the people who oppose this bill. They have no ax to grind. They are not on one special interest or the other. The Brain Injury Association, the Center for Auto Safety, Children Afflicted by Toxic Substances, Citizen Action, Coalition for Consumer Rights, Coalition to Stop Gun Violence, Consumer Federation of America, Consumers Union, the Gray Panthers, National Consumers League, National Hispanic Council on Aging, Public Citizen, Remove Intoxicated Drivers, U.S. Public Interest Research Group, Violence Policy Center, Nuclear Information and Resource Services, Clean Water Action, the Sierra Club, Dalkon Shield Information Network, DES Action USA, the Feminist Majority, the National Organization of Women, the National Women's Health Network, the National Women's Law Center, and Women Employed.

Mr. President, I ask unanimous consent to have printed in the RECORD a list of all of these groups.

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

THIRTY-SEVEN CITIZEN GROUPS OPPOSING THE PRODUCT LIABILITY CONFERENCE REPORT

AFL-CIO.
Brain Injury Association.
Center for Auto Safety.
Children Afflicted by Toxic Substances.
Citizen Action.
Coalition for Consumer Rights.
Coalition to Stop Gun Violence.
Consumer Federation of America.
Consumers Union.
The Empower Program.
Gray Panthers.
International Association of Machinists and Aerospace Workers.
Int'l Union, United Automobile Aerospace & Agricultural Implement Workers of America.
Nat'l Conference of State Legislatures.
National Consumers League.
National Farmers Union.
National Hispanic Council On Aging.
Public Citizen.
Remove Intoxicated Drivers.
Safe Tables Our Priorities.
United Food and Commercial Workers.
U.S. Public Interest Research Group.
United Steelworkers of America.
Violence Policy Center.
Nuclear Groups:
Nuclear Information & Resource Service.
Public Citizen's Critical Mass.
Safe Energy Communication Council.
U.S. Public Interest Research Group.
Environmental Groups:
Clean Water Action.
Sierra Club.
Sierra Club Legal Defense Fund.
U.S. Public Interest Research Group.
Women's Groups:
Dalkon Shield Information Network.
DES Action USA.
Feminist Majority.
National Organization for Women.
National Women's Health Network.
National Women's Law Center.
Women Employed.

Mrs. BOXER. Mr. President, we should not look to the lawyers and we should not look to the companies. We should look to the people who stand up and speak for consumers and speak for victims.

Now, I think this bill is particularly tough on women. I do not know what has happened to this place, but do we

forget things that just happened? Do we forget about the silicone gel breast implants which were introduced in the market in 1962 with no long-term testing before being placed inside women? Implant patients and some doctors were told by manufacturers that the implants were safe and would last a lifetime. However, the implants were found to leak or rupture, releasing silicone into the body, now known to migrate to the brain, liver, spinal fluid, and kidneys. Now many women with ruptured implants are sick with a variety of autoimmune diseases.

It was because of a lawsuit that included a punitive damage award of $6.5 million that the full extent of the hazards associated with silicone gel breast implants were brought to the public's attention. The availability of silicone gel breast implants were restricted only after Dow-Corning was held liable for punitive damages.

Do we not think more about women's health? Have we forgotten that? Have we forgotten the Copper-Seven IUD? The manufacturer knew for more than 10 years that their product could cause loss of fertility, serious infection, and the need to remove reproductive organs. Instead of doing anything about it, the manufacturer continued to earn profits and put millions of women at risk. A jury awarded one $7 million punitive damage award for what it determined to be the manufacturer's intentional misrepresentation of its birth control devices. Under this bill, that manufacturer would have had to pay $250,000, or double the plaintiff's compensatory damages, whichever is higher. We know in most cases women do not get as much in compensatory damages as men because women often earn less money. We know that. This bill is antiwomen. We should call it what it is.

How about the Dalkon shield? You heard the Senator from Massachusetts talk about that. It took eight punitive damage awards before A.H. Robins discontinued the Dalkon shield. A $7.5 million punitive damage award was awarded to a 27-year-old woman who had to have her uterus removed, rendering her sterile and in need of dangerous synthetic hormone treatments. That was extraordinary. But it took more than one punitive damage award. They made so much profit they kept on producing it. They concealed studies of the dangerous effects and even misled the doctors into prescribing the IUD.

If it takes multiple punitive damage awards to force a major corporation like A.H. Robins to stop selling dangerous products, how could dangerous products be stopped by this legislation which caps punitive damage awards to relatively low amounts? The Dalkon shield is yet another example of how the current system finally took a dangerous contraceptive off the market.

I cannot believe there are those in this body who feel that this legislation can make life better for the people of this country, just on the few examples that I have brought here today. To the contrary, it will put our people at great risk.

The Senator from Washington shows you with his chart that businesses write it into the bottom line.

The proponents of this legislation argue that the current system prevents women from having more choices when it comes to contraceptives. Well, I have a daughter, and a lot of you have daughters. Do you want to see dangerous contraceptives come on the market? Let me tell you unequivocally—and I will debate this point toe to toe with anyone in this Chamber—if the current system is preventing other Copper-7 IUD's or Dalkon shields, or other dangerous contraceptives from coming on the market, I say that is good. Because I do not want my daughter sterile, and I do not want my daughter sick, and I want her to have more children if she chooses to do that, and to live a healthy life. We want contraceptives, but we want them to be safe.

In conclusion, Mr. President, let there be no mistake as to what this conference report is all about. This is not proconsumer legislation. This legislation is anticonsumer. That is why every major consumer group in this country opposes it strongly.

The conference report is about protecting wrongdoers. Now, if some of my colleagues, for whom I have great respect, see it another way, that is their right. But I am here to call it the way I see it. It is designed to relieve corporate America of its proper legal duty to make safe products, represent them accurately, and treat consumers fairly.

I have seen no justification put forth thus far in this debate by the proponents of this conference report that leads me to believe that it will help our people. I believe it will, in fact, trample on the rights of American consumers. We, in this Senate, are the last line of defense of the rights of the American consumers and for working families. I tell you, we need to protect them from this legislation.

Again, I thank the President for getting out there and saying he is standing on the side of the consumers. To those who say, "He is doing it for lawyers," we can argue that from night until day, lawyers on one side, big business on the other. For some, that is a tough choice. That is not what the choice is about. The choice is about the consumer. The choice is about little babies in cribs. The choice is about women's reproductive health, safety in the workplace, at home, and when we are at leisure. That is what it is about. I say that this U.S. Senate should stand with the consumers. If you do that, you are fulfilling your responsibilities.

I thank the Chair, and I thank Senator HOLLINGS.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator, first, from Massachusetts, for his presentation this morning, in a most meaningful way and, of course, the Senator from California. She really keynoted the issue as it should be in a very cogent and persuasive fashion. When we say consumers, that is the people versus those making a profit on defective products, with shoddy manufacturing.

America is the safest place in the world to live. That is part and parcel, as mostly I would say, I guess, because of our State legislatures. The State legislatures have acted on the need of product liability provisions. They have acted and they have maintained their laws. But it now becomes an assault in the name of a cost of a hotel room, or a ski lift, and such nonsense as that, trying to really move the attention, I guess, of the Senators, thinking they, frankly, do not have much sense and will go along with that kind of nonsense. Thinking that Senators will not understand what the Senator from California is trying to emphasize—these are real life injuries, and the more we get into them in a very meaningful way, as we do in trial law practice, the less danger and injury has been caused. So I could not express my gratitude enough to the Senator from California. I wish we could go ahead and vote right now, but I will retain the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I yield such time as the Senator from West Virginia may desire.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank my colleague. Mr. President, I am very happy that we are here this morning with this remaining part of the debate. Already, a variety of charges have been made, which have no basis in fact, as they relate to the product liability reform. But I think rather than to try to go into that, it would be better to focus on what this law is trying to do and why it is a good conference report.

In a matter of a couple of hours, we are going to pass this conference report. It will pass. The House and the Senate, for the first time, I believe, in recent history will have passed product liability tort reform. So it is an interesting and, I think, a rather noteworthy point of history.

We have had really a couple of decades of hearings, markups, and arguments. I remember one time a number of years ago we actually had 60 votes on cloture, and the majority leader at that time—it was still legal to do so—stopped the vote, actually stopped the vote. The Presiding Officer was not here in this body yet. For 45 minutes we waited, and all of a sudden, two "yes" votes became two "no" votes. I retain in a desk drawer in my office the

sheet which is held at the Democratic desk, which shows how the numbers go up, and they went up to 57, 58, 59, and got to 60, and then it went from 60 to 59 to 58. So there is a lot of history on this. Of course, there is a lot of emotion. A lot of that emotion is justified. Some of it is not. But history, there is.

I expect the House to approve this report in short order and send it on to the President, who has a chance, I think, to do something remarkable and significant for this country, if he should choose to sign what will then be the legislation.

I regret that yesterday's debate demonstrated—and already this morning some, too—there are some very fundamental misunderstandings. I think some of the misunderstandings are very deliberate. They are deliberately put forward to obscure and obfuscate. I think the reason for that is understandable. Product liability tort reform law is not everybody's first choice of the day when they get up in the morning. They do not say, "How can I get deeper into product liability tort reform law?" Those of us who are not even lawyers understand best what I am talking about.

Therefore, it becomes easy to mislead. I suppose it is easy for the proponents, as well as for the opponents of this legislation, to mislead. But I think that the proponents have really tried not to mislead, to stick to what is in the legislation. The opponents have been vigorous in their work, which is part of the legislative process.

I want to emphasize that this conference report is only, Mr. President, about something called product liability reform. That is all it is. It does not pretend to be more. It does not pretend to solve the crisis in Bosnia or hunger in Rwanda, nor anything else. It is just about product liability reform.

It establishes some uniformity for consumers and businesses in our product liability system. That is what we attempted to do. That is it. Product liability reform. This is not broad civil justice reform. This is not an overreaching House contract item. This is not a bill that protects drug traffickers, or gun users, or those who sell drugs or guns. This is not an extreme bill. This is a limited bill.

The Senator from the State of Washington, who has been credible throughout this process, has been extraordinary, I think, in helping to discipline and to make sure that we sculpted this bill and then kept this bill basically in the form —virtually, with the main exception of the statute of repose—as the Senate passed it last May, which is almost a year ago.

One of the reasons for this long, long period of time is that it took a long time for the House to accept that we really meant it, and that when we said we were going to stick with the Senate bill, we really meant it, and that in fact we had to, in any event because it was a matter of mathematics. Yesterday we did not get 58 votes, we got 60 votes. Finally that was understood.

So what this bill does is establish a fair and a balanced commonsense rule which benefits both consumers and business persons, and it will create jobs. The Senator from Washington has discussed the aviation liability reform. I think it will improve product safety because it will allow manufacturers to make improvements.

Now, manufacturers often decline to make improvements to their product because they are afraid that if they make an improvement, it will infer somehow that their previous iteration of the same product was deficient or unsafe. So rather than take that chance they do not make the improvement. That does not help consumers.

I think it will encourage innovation. I know it is going to encourage innovation. And I think it will stimulate economic growth just as the aviation bill did.

I have to say once again that there are all kinds of ways of protecting the consumer. We can do it through being sure that there are punitive damages available. That is the reason for the additional amount that was added, and that is also the reason that at the suggestion of the Department of Justice we clarify, the additional amount to make it a stronger case should there be a constitutional challenge against it—because we are determined that there will be no cap on punitive damages except whatever the jury decides.

I am forced just by definition of the world that we live in to look at, once again, at our competition. You know that when people lose jobs in our country or do not gain jobs that they might gain, that is one of the worst things you can do to them. It is injuring them in a very severe way. It is depriving them of family and economic justice. In the case where it puts people on Medicaid, that is very obviously the consequence of that. Not having a job is a way to hurt somebody deep and hard.

In the European Economic Community, which has, I think, 350 million consumers—Europe is one of our huge competitors—there are 13 countries in that community. Those countries presumably have provinces, or whatever they call them. It does not make any difference. They overrun all of that, and they have one uniform product liability law for all of those countries because they want to be able to minimize transactional costs, maximize research and development, maximize jobs, and maximize their competition against the United States of America, which is their principal competitor. So they have banded together to do this because they know that, if they do that, they will have a leg up on us in terms of the creation of jobs.

Japan, which I think very few would argue is not a competitor to the United States economically, has just this year done the same thing. So they have a single uniform liability law for their entire nation. They do not sue a whole lot anyway. I think there are 13,000 lawyers in Japan, and there are 600,000 or 700,000 in the United States. Nevertheless, they are ready.

So they understand that the system that America has has very, very high transaction costs, and they understand that the high transaction costs exceed the compensation that is ultimately paid to the victims of defective products. That is great for lawyers—both for trial lawyers and defense lawyers. They are both equally guilty. But they get the money, not the victim. They get the majority of it. It used to be that in the Wild West people carried six-shooters, and they would just shoot. We have a different, more modern way of doing it now, and we destroy ourselves in other kinds of ways.

So these transaction costs, of course, are then real costs, and they have to be passed on to the consumers through higher priced products. People say when you pay more for a product that, "Well, that is the kind of argument people make." It is true. We pay more. The Senator from Washington is prepared to give all kinds of statistics about that. He did yesterday. We pay more. Consumers pay more so that the trial lawyers and the defense lawyers can make more. In a sense, I am not blaming them because that is the system of law that they live under, as do we. That is why we are trying to change the law—so as to bring some more common sense into this process.

The system's unpredictability and inefficiency are big items. Unpredictability is a bad thing. It is a bad thing. It is a lack of uniformity, a lack of predictability. It is harmful. It stifles innovation. It stifles research and development.

What is the very first thing that happens in this country? I have heard many times the distinguished Senator from South Carolina say this. When a company gets in trouble, or a company is up against a lawsuit, or a company is whatever for whatever reason in trouble, what is the first thing they do? They cut out research and development. That is the first thing they cut, which is, in fact in many instances, one of the last things they should cut.

It is just like a hospital. When a hospital gets in trouble financially, what is the first thing they do? They close the emergency room because it is the most expensive, which is often the last thing they should do in terms of the community they serve. But they act as they believe they have to act, and we have to understand that.

So, stifling innovation and keeping beneficial products off the market has handicapped American firms as they

try to compete in a global marketplace. The current system is simply unfair, therefore, again to consumers and to businesses alike, and that is why we are projecting this conference report forward.

Of course, many of the States have fully recognized the inequities of the current system, as has been pointed out by a number on the other side of this argument. The States are very aggressive on this, and they have moved ahead to enact product liability reform. Thirty States have made major changes in joint and several, for example, and in most cases—virtually all cases—it is limiting joint and several. But by doing so, while solving some issues, they have inadvertently created other kinds of problems.

Only through Federal product liability reform can we, in this Senator's judgment, resolve the problems caused by the current State-by-State product liability system. State legislatures can be very helpful in this area, but it is virtually impossible for them to be uniform because they are all different.

We have 134 legislators in our State of West Virginia in the senate and house. They are not going to do the same thing that Ohio does, or that Kentucky does, or that Virginia or Maryland do. They are just not going to. So you have, in fact, 51 different laws relating to product liability in our country.

As I said yesterday, years and years ago I suppose that the majority of products made in the States were sold in those States. That is no longer true. Seventy percent of products made in the State of Ohio, and in the State of the Presiding Officer, if it is at the national average, are sold outside of Ohio. The same is true with the State of West Virginia, the State of Washington, and the State of South Carolina. So we are an interstate as well as an international economy. Therefore, we need uniformity at certain points to shape and adapt to that.

For this reason, State reform legislation—because of the 70 percent being shipped outside of the State of manufactured goods, less than 30 percent effectiveness is the standard for State law. I mean, by definition, they have to be less than 30 percent effective. On the other hand, all of the State citizens who sue in the State are governed by that State's product liability statute, and thus they fall victim to an antiquated system, and the people here want to protect them.

That is why the National Governors' Association recognized both the need for product liability reform and the necessity of Federal action to effectuate that reform. They did not say, well, States, you have to do a better job and do things more alike. They said, no, there have to be places where the Federal Government sets uniform standards.

The Senator from South Carolina was talking yesterday about how the States always want to have more power; they want to have the power shifted to them. That is the direction in which our country is going.

That is not the direction of the National Governors' Association on product liability and tort reform. They want more Federal action. That is why the American Legislative Exchange Council, not very well-known, but it is a bipartisan group of over 2,500 State legislators—that is a lot of them—representing all 50 States, three times has called upon Congress to enact product liability law which is Federal. That is why President Clinton has said that he supports the enactment of limited but meaningful product liability reform at the Federal level. He said that in a number of statements—in a letter to us, in a statement of policy to us—during the course of this debate. H.R. 956 contains that limited but meaningful product liability reform which makes common sense and which has measures which are good for ordinary consumers and businesses.

Incidentally, Mr. President, I wish to make one point. People keep referring—and even there was an article this morning in the Washington Post—to big business versus trial lawyers. On the business side, it is not big business which is really at stake here. It is small business. That is the reason for the support of the National Federation of Independent Businesses.

Mr. President, 98 percent of businesses in America are small. Those are the people who get put out of business most quickly. Those are the people who have the least cash reserve. Those are the people who live at the margins. Those are also places, we have long established, from where often the best ideas come. That is the overwhelming dynamic center of the American economy.

So H.R. 956 contains, as I have said, what I believe is needed.

Mr. President, I ask unanimous consent that a list describing the major provisions of the conference report be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. ROCKEFELLER. Mr. President, the conference report does, however, provide the following: legal fairness for product sellers; a rule to discourage illegal use of alcohol and drugs—we cannot stop it but to discourage it, certainly not to reward it—a proconsumer statute of limitations, an enormously proconsumer statute of limitations; a statute of repose that will stimulate jobs and economic growth; alternative dispute resolution as a way of settling some of these matters. It is voluntary, which is not so thrilling to me. I wish it were not. I wish it were mandatory, but it is voluntary. At least it is there. That is the way they do things in Japan. That is why they settle everything over there, which is not to say they do not have their economic problems, but product liability is not one of their problems. Punitive damages fairness is in this bill. Opponents of the bill say we cap punitive damages. Untrue. Untrue. I will not vote for legislation which caps punitive damages, as I would not vote for legislation that caps what lawyers can make. Part of me would like to, but I do not believe that because I believe the market should make that decision. But punitive damages are not capped.

We added the additional amount provision, originally called the judge additur provision, a suggestion which was endorsed by a number of high-up folks at the White House and then the whole idea for making sure that it was more constitutional came from the Department of Justice, which I presume to be the executive branch of Government. So there are no caps on punitive damages, and I will assert there could not be because I was a part of this bill. I was not going to go along with a bill that would allow such a thing.

There is several liability for noneconomic loss; workers compensation subrogation; biomaterials access assurance.

These, Mr. President, are some of the highlights.

Now, in winding up here, I should like to take a moment to comment on where we stand in the legislative process. I wish to be hopeful; I try to be hopeful; I am hopeful; I will insist on being hopeful; I will be everlastingly hopeful that the President will reconsider his decision to veto this product liability conference report and that in fact he will sign it. I firmly believe that the President can sign this bill, even recognizing that he will not support each of its provisions. There are some provisions that I think ought to be in this. There are some provisions which I think ought to be changed, some. Nobody gets everything they want. There are 535 people in the Congress.

Even though the President might not support each of its provisions, when the product liability conference report is considered in its totality, in balance with the need for this reform, I remain hopeful that the President will still seize this opportunity to participate in product liability reform which will benefit in fact the American people and the American economy. From my point of view, I stand ready to work with the President to achieve what I believe is our common goal, his goal, my goal, our goal, of fairly balancing what needs to be fixed in our broken product liability system, which he surely must recognize, while preserving important rights for consumers. This is not business versus consumers. We are trying

to achieve a balance where each business and consumer gets certain improvements, and providing business with the predictability that they need to compete in today's economy.

In conclusion, because I do not know how much time is remaining—and I am not interested—I wish to thank a few people. First of all, I again wish to thank Senator GORTON, Senator SLADE GORTON from the State of Washington, G-O-R-T-O-N. That is his name. He has been absolutely incredible over the years and continues to be in this process—remarkable, calm, intellectual, unflappable, fair, flexible. It is just a stunning privilege to be able to work with SLADE GORTON and with his staff, Jeanne Bumpus, Trent Erickson; Commerce Committee staff, Lance Bultena. We spend a lot of time together. When you do these things, you get real close.

I thank all of the Democratic supporters, not that that is a convention full of people, but I thank each and every one of them and all of their staff. And, obviously and particularly, I want to thank my own staff: Jim Gottlieb, a superb lawyer—inventive, flexible, calm, tough, a great negotiator and a marvelous human being; Ellen Doneski, who is just indefatigable. She is just like some kind of a rolling army—cannot be stopped. She has a tremendous sense of humor, is relaxed, adamant, just puts her mind to this or other things. She is actually part of my health care staff, but she is so smart and so flexible she can get this mastered. She is not a lawyer, but do not tell anybody that because everybody thinks she is.

Then I want to thank another person who is not here because her fiance has been through, and is still going through, a terrible, terrible crisis, and that is Tamera Stanton, who is kind of here in spirit. When we were having this debate last year, she sat next to me. She is my legislative director, an extraordinary, brilliant, wonderful person who is now going through a very, very tough—but also encouraging—experience in terms of the health of her fiance, as they hope and plan to get married in June.

So, I am mindful of these people, grateful to these people, and I thank my colleagues for their forbearance.

Mr. President, I ask unanimous consent that numerous fact sheets, and a list and letter from small business organizations, be printed in the RECORD. I yield the floor.

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

(See exhibit 2.)

EXHIBIT 1

MAJOR PROVISIONS OF CONFERENCE REPORT

Legal Fairness For Product Sellers: Product sellers are held liable only for their own negligence or failure to comply with an express warranty. The product seller, however, remains liable as if it were the manufacturer if the manufacturer cannot be brought into court or is unable to pay a judgement. This provision assures injured persons will always have available an avenue for recovery, while relieving retailers and wholesaler-distributors of substantial unnecessary legal costs. The provision is "consumer neutral" and any attempt to characterize it another way lacks credibility.

Rule to Discourage Illegal Use of Alcohol and Drugs: The defendant has an absolute defense in a product liability action if the plaintiff was under the influence of intoxicating alcohol or illegal drugs and as a result this influence was more than 50 percent responsible for his or her own injuries. The alcohol/drug defense in H.R. 956 is consistent with law of the substantial majority of states implements sound public policy. It tells persons that if they are drunk or on drugs and that is the principal cause of an accident, they will not be rewarded through the product liability system. It also relieves law-abiding citizens from having to subsidize others' irresponsible conduct through higher consumer prices. This provision has not been controversial or challenged by professional consumer groups as unfair.

Pro-Consumer Statute of Limitation: H.R. 956 permits a plaintiff to file a complaint within 2 years after he or she discovers or should have discovered both the harm and its cause. This is a liberal, pro-claimant provision, which will be particularly helpful to persons who have been injured by products that result in latent inquiries (*e.g.*, drugs and chemicals). Contrary to the suggestion by some opponents, this provision will create a uniform, fair national standard which will open courthouse doors to plaintiffs in many states, such as Virginia.

Statue Of Repose Will Create Jobs and Stimulate Economic Growth: A limited statistic of repose of 15 years is established for durable goods used in the workplace, unless the defendant made an express warranty in writing as to the safety of the specified product involved, and the warranty was longer than the period of repose (15 years). Then, the statue of repose does not apply until that warranty period is complete. The statute of repose provision will not apply in cases involving a "toxic harm."

Strong support exists for this reform, particularly as a result of the enactment of the General Aircraft Revitalization Act of 1994, signed by President Clinton in August 1994, which created a federal eighteen year statute of repose of general aviation aircraft. This law has resulted in production of safer aircraft and the creation of thousands of new jobs and has not been perceived as unfair to consumers. A growing number of states have enacted legislation in this area as well. The statute of repose in H.R. 956 is both longer and more limited in scope than any existing law.

As one might expect, there are very few cases involving older workplace durable goods and they are generally won by defendants. Nevertheless, cases involving very old products bring about substantial legal costs and put American machine tool builders and other durable goods manufacturers at a disadvantage with foreign competitors. Foreign competitors rarely have machines in this country that are thirty or more years old, so they pay less liability insurance than their American competitors.

Alternative Dispute Resolution: Either party may offer to participate in a voluntary, non-binding state-approved alternative dispute resolution (ADR) procedure. This pro-consumer provision is intended to promote the use of ADR procedures, which can provide a quicker and cheaper mechanism of handling legal claims. This provision should help such individuals receive compensation for their claims more quickly and bypass the need to retain costly legal representation.

Punitive Damages Fairness: Punitive damages are quasi-criminal punishment for wrongdoing; they are a windfall to the claimant and have nothing to do with compensation for injury. H.R. 956 permits punitive damages to be awarded if a plaintiff proves, by clear and convincing evidence, that the harm was caused by the defendant's "conscious, flagrant indifference to the rights or safety of others." The standard is consistent with law in most states.

Punitive damages may be awarded against a larger business up to the greater of $250,000 or two times the claimant's total economic and noneconomic damages; against an individual or small business, punitive damages can be awarded up to the lesser of $250,000 or two times the claimant's total economic and noneconomic damages. The provision is "gender neutral" and places no limitation on compensatory damages (economic damages plus "noneconomic damages" such as pain and suffering). A special rule allows a judge to augment the punitive damages award against a big business when the "proportionate" award is "insufficient to punish the egregious conduct of the defendant." A controversial provision that would allow the defendant the right to a new trial if the court used this special power has been removed from the legislation and does not appear in the conference report—as Senator Gorton and I vowed it would not.

Approximately one-quarter of the States have set forth guidelines on punitive damages awards, including Illinois, Indiana, North Carolina, New Jersey, Oklahoma, and Texas in 1995. Because H.R. 956 is not preemptive, the outcome of many punitive damages cases involving larger businesses would not be affected. In some cases against small businesses, however, the outcome may help the business survive, because the bill limits the amount of punitive damages recoverable against a small business to $250,000. This is a particular benefit to the small business community, since an award exceeding $250,000 could virtually wipe out most small businesses.

Several Liability For Noneconomic Loss: The rule of joint liability, commonly called joint and several liability, provides that when two or more persons engage in conduct that might subject them to individual liability and their conduct produces a single, indivisible injury, each defendant will be liable for the total amount of damages. This system is unfair and blunts incentives for safety, because it allows negligent actors to under-insure and puts full responsibility on those who may have been only marginally at fault. Thus, a jury's specific finding that a defendant is minimally at fault gets overridden and the minor player in the lawsuit bears an unfair and costly burden.

Joint and several liability produces extreme harm for our society. For example, Julie Nimmons, CEO of Shutt Sports Group, Inc. in Illinois, has testified that joint liability has caused manufacturers of protective sporting goods equipment, such as safety helmets, to withdraw products from the market or be chilled from introducing new products. Recognizing the urgent need for reform of this unfair doctrine, 33 states have already abolished or modified the principle of joint and several liability.

H.R. 956 adopts a balanced approach between those who call for joint liability to be

abolished and those who wish for it to remain unchecked. The legislation eliminates joint liability for "noneconomic damages" (e.g., damages for pain and suffering or emotional distress), while permitting the states to retain full joint liability with respect to economic losses (e.g., lost wages, medical expenses, and substitute domestic services). This means that each defendant will be liable for noneconomic damages in an amount proportional to its percentage of fault of the harm. This "fair share" rule is based on a joint liability reform enacted in California through a ballot initiative approved by the majority of voters in 1986. The same approach was enacted by the Nebraska legislature in 1991.

It has been argued by some opponents that the provision is "anti-women" because their economic damages may be lower than men and, for that reason, they depend on noneconomic or so-called "pain and suffering" damages. However, there has been absolutely no showing in California, a large and litigious state, that the California approach discriminated against any sex or any group. In fact, noted California trial attorney Suzell Smith has testified that the California law is fair and has worked well for consumers.

Workers' Compensation Subrogation: This provision preserves an employer's right to recover workers' compensation benefits from a manufacturer whose product harmed a worker unless the manufacturer can prove, by clear and convincing evidence, that the employer caused the injury. This provision would modify state law in a very positive way. It would create a new private incentive on employers to keep their workplace safe and achieve this goal without reducing the amount an injured employee can recover in a product liability action. This provision has not been challenged by professional groups as controversial or unfair.

Biomaterials Access Assurance: Millions of citizens depend on the availability of lifesaving and life-enhancing medical devices, such as pacemakers and hip and knee joints. The availability of these devices is critically threatened, however, because suppliers have ceased supplying basic raw materials to medical device manufacturers. A 1994 study by Aronoff Associates concluded that there are significant numbers of raw materials that are "at risk" of shortages in the immediate future. Suppliers have found that the risks and costs of responding to litigation related to medical technology far exceeds potential sales revenues, even though costs are *not* finding suppliers liable!

H.R. 956 will safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices. The provision was introduced in this Congress as S. 303, the "Biomaterials Access Assurance Act of 1995," by Senators Lieberman and McCain and was added to the Senate version of H.R. 956 during the Commerce Committee's markup. The provision, which has been the subject of hearings and enjoys very strong bipartisan support, will help prevent a public health crisis by limiting the liability of biomaterials suppliers to instances of genuine fault and establishing a procedure to ensure that suppliers—not manufacturers, can avoid litigation without incurring heavy legal costs. This provision is critically important to all Americans, particularly women, according to Phyllis Greenberger, Executive Director for the Society for the Advancement of Women's Health Research.

Ironically, even though this bipartisan provision would unquestionably provide a tremendous public health benefit and would not adversely affect consumers, it is not well understood by some and, therefore, becomes a target by those who are willing to concoct and perpetuate untruths in the desperate attempt to selfishly promote their own economic agenda. The fact is that this is a proconsumer provision which does not in any way limit the ability of claimants to seek recovery from medical device manufacturers; the provision recognizes the "common sense" principle that suppliers of basic materials, who are *not* currently found liable, should not be permitted to be indiscriminately hauled into court.

EXHIBIT 2

THE FACTS ON PRODUCT LIABILITY

Fact: There is no cap on economic or noneconomic damages. Claimants will continue to be able to recover whatever they are awarded in a court.

Fact: The statue of repose remains limited to durable goods in the workplace only. Statements being made that we now cover all goods are simply wrong.

Fact: Product sellers, lessors, or renters will NOT be protected from negligent entrustment liability. That is precisely why the "negligent entrustment" exception was moved to the product sellers section of the bill.

Fact: Dow Corning, and other companies who made or make breast implants will NOT be shielded from liability. Whether or not they supplied the silicone, they remain liable as manufacturers.

Fact: Drunk drivers, gun users, etc will NOT be protected from liability in any way. Opponents are intentionally trying to confuse harm caused by a product, which IS covered in the bill, and harm cause by the products' use by another, which is NOT covered in the bill and remains totally subject to existing state law. (See Sec 101 (15) and 102 (a)(1)—definition of product liability action includes only "harm caused by a product" not "use." This is a big difference.

Fact: In all states that permit punitive damages, they will continue to be available, and the "additional amount" provision will apply in all those states, regardless of whether caps are higher or lower in that state.

Fact: Tolling of the statue of limitations will be covered as they now are, by applicable state and federal law. For example, see 11 USC 108c automatic tolling in bankruptcy cases. Nothing in the bill or omitted from the bill will change state law on tolling.

Fact: State law will continue to control whether or not electricity, stem, etc is considered a product or not.

Fact: This is NOT one-way preemption, but a mix of state and federal rules. Products are in interstate commerce, and should be subject to more uniform rules for businesses and consumers.

Fact: 30 states have modified joint and several liability at this point. The federal proposal follows the California law affecting ONLY noneconomic damages.

PROVISION AND PRODUCT LIABILITY
CONFERENCE REPORT, MARCH 13, 1996

Liability of Product Seller

Same as Senate bill—Product seller can be held liable as manufacturer only in limited circumstances.

Applicability/Preemption

Same as Senate bill—Applicable to product liability cases only.

Alternative Dispute Resolution

Same as Senate bill—Dispute Resolution (ADR), with no defendant loser pays provision.

Defenses Regarding Alcohol or Drugs

Same as Senate bill—Complete defense if claimant was more than 50 percent responsible.

Reduction for Misuse or Alteration

Same as Senate bill—Reduction of damages by the percentage of harm which is the result of the misuse or alteration.

Punitive Damages

Same as Senate bill: (a) Ceiling of greater of $250,000 or 2 × compensatory; (b) DeWine Amendment including assets in determination of damages; (c) DeWine small business amdt—limits punitive damage awards for business under 25 employees, to the lesser of $250,000 or 2 × compensatory damages; and (d) Judge can award an additional amount for punitive damages in egregious cases, under factors set forth in bill. [Clarification that judge can award all the way up to the initial jury award.]

Statute of Limitations

Same as Senate bill—Two years after date of discovery of the harm and cause of harm or date that these should have been discovered.

Statute of Repose

Retains Senate scope—Limits to 15 years for durable goods in the workplace only, with exception for toxic harm.

Joint and Several Liability for Noneconomic Loss

Same as Senate bill—Joint and several liability for all economic damages, and several liability for noneconomic damages.

Federal Cause of Action

Same as Senate bill—No new federal cause of action.

Biomaterials

Same as Senate bill—Biomaterial suppliers who furnish raw materials or component parts, but who are not manufacturers or sellers, are protected from liability; amendments addressing shell corporation concerns and deleting the certificate of merit requirement.

Is this one-way pre-emption?

This is a real red herring argument. The truth is this is a balanced bill—for consumers and for business. In some cases state law prevails, and in some cases, the federal law controls.

The goal of federal legislation, especially where you are dealing with interstate commerce, is uniformity, fairness, and predictability. It naturally follows that Federal laws very often must preempt inconsistent state laws. And this product liability bill allows maximum flexibility for the states within a uniform federal system.

The interpretation of which laws apply to which situations, is complicated (and is best left to the lawyers). But lets look at a few of the specifics of the bill:

If a state has a shorter statute of limitations, and many do, this bill makes it longer. Period. Which way is that preemption?

If a state has a statute of repose, this bill makes no change as to the time period, but does make sure that victims of toxic harm receive compensation regardless of the time that their injury is discovered.

If a state doesn't allow punitive damages, at all under current law, this bill makes no change in that state's laws.

In some states that do permit punitive damages, such as Colorado and Maryland, the standard for allowing punitive damages is lessened, not stricter. (The standard goes from one requiring proof "beyond a reasonable doubt" and "actual malice" to "clear and convincing evidence.)

If a state does permit punitive damages, I believe that the new federal rules will, for the first time, permit judicial flexibility in determining the amount of punitive damages, even if there is a cap on the amount of punitive damages under that state's law which is different that the new federal bill.

So, in summary, yes this bill does preempt state law in some situations. But to suggest that it is totally one-way is misleading at best.

The conference report is a tightly balanced bill seeking to make some uniformity out of a patchwork of conflicting state laws.

U.S. SENATE,
Washington, DC, March 20, 1996.

KATHERINE PRESCOTT,
National President, MADD, Irving, TX.

DEAR MS. PRESCOTT: Your letter of March 19 is wrong, and based on a totally incorrect quoting of the proposed law.

Your letter says that the product liability bill covers "harm caused by a product or product use." that is incorrect.

The legislation reads: "harm caused by a product" only.

You have been misinformed, perhaps intentionally, in an effort to convince you that cases of drunk driving would be covered under the bill. The fact is that cases of drunk driving or so-called dram shop cases would not be covered by this legislation.

In addition, those who "negligently entrust" a product, such as alcohol, resulting in drunk driving situations, would not be protected in any way under the law.

I will read your incorrect letter, and this response, into the CONGRESSIONAL RECORD today, and I expect you will want for me to include your retraction letter as well.

Kindly FAX your retraction to me immediately at 202-224-9575.

Thank you.

Sincerely,

JOHN D. ROCKEFELLER IV.

IMPACT OF FEDERAL PROVISIONS ELIMINATING JOINT AND SEVERAL LIABILITY FOR NONECONOMIC DAMAGES IN PRODUCT LIABILITY CASES

The Conference Committee version of the product liability bill is currently expected to retain the Senate bill's provision eliminating joint liability for noneconomic damages. This Federal law provision would not significantly change the law in those states which already either have eliminated or severely limited joint liability, or have imposed specific limitations on the award of noneconomic damages.

Twelve states have eliminated joint liability altogether: Alaska, Arizona, Colorado, Idaho, Indiana, Kansas, Kentucky, North Dakota, Tennessee, Utah, Vermont and Wyoming.

Two states have eliminated joint liability for noneconomic damages: California and Nebraska.

Ten states have otherwise limited the availability of joint liability as to noneconomic damages or damages generally, so as to make it significantly less likely that noneconomic damages would be subject to joint liability: Florida, Illinois, Iowa, Mississippi, Montana, New Hampshire, New Jersey, New York, Oregon, and Texas.

Three states have eliminated joint liability in cases in which the plaintiff is negligent: Georgia, Ohio and Oklahoma.

Five states (including three already mentioned) have capped awards of noneconomic damages: Alaska, California, Kansas, Maryland, Massachusetts and Michigan.

In all, 30 states have adopted measures that already limit the recovery of noneconomic damages. These include eight of the nine largest states in the union—California, New York, Texas, Florida, Illinois, Ohio, Michigan and New Jersey.

SMALL BUSINESS ORGANIZATIONS SUPPORTING PRODUCT LIABILITY REFORM

National Federation of Independent Business (600,000 small businesses).

National Association of Wholesaler-Distributors (156 trade associations representing 250,000 small businesses).

U.S. Chamber of Commerce (215,000 small businesses).

National Association of Manufacturers (10,000 small businesses).

Small Business Legislative Council.

National Association of Women Business Owners.

National Small Business United.

JOINT LETTER TO MEMBERS OF CONGRESS FROM AMERICAN SMALL BUSINESS LEADERS ON PRODUCT LIABILITY REFORM, APRIL 3, 1995

DEAR MEMBERS OF CONGRESS: On behalf of the nation's more than 21 million small and growing businesses, we are writing to strongly urge your support of S. 565, The Product Liability Fairness Act of 1995.

You know the problem: A single lawsuit can and has put many small business owners out of business.

For many small businesses, the explosion in product liability cases means it is simply impossible to find and keep affordable liability insurance.

You've heard the horror stories. (If you haven't, give us a call.)

Why should you care? Small businesses create virtually all the net new jobs in the economy. And businesses owned by women now employ more people than the entire Fortune 500 combined. While most of our company names are not household words, small business comprises the backbone of the nation's economy—from Main Street to Wall Street.

We need your help.

Product liability reform was the #1 issue at the White House Conference on Small Business in 1986. Finally, after more than a decade of struggle, product liability reform seems within our reach.

Please support S. 565, The Product Liability Fairness Act of 1995, and help protect U.S. consumers, workers and small businesses. Our future and the future of our nation's economy, depends on it.

Thank you for your support.

Gary Kushner, President, Kushner & Company, Inc., President, National Small Business United, Kalamazoo, Michigan

Carol Ann Schneider, President, Seek, Inc., President, Independent Business Association of Wisconsin

Patty DeDominici, President, National Association of Women Business Owners (NAWBO), Los Angeles, California

Willis T. White, President, California Black Chamber of Commerce, Burlingame, California

Thomas Gearing, President, The Patriot Company, Federal Reserve Board, Small Business Advisory Committee, Milwaukee, Wisconsin

Margaret M. Morris, NAWBO Chapter President, Chevy Chase, Maryland

Lewis G. Kranick, Chairman of the Board, Krandex Corporation, Wisconsin Delegation Chair—1986, White House Conference on Small Business, Milwaukee, Wisconsin

Linda Pinson, Principal, Out of Your Mind . . . and Into the Marketplace, NAWBO Financial Services Council, Tustin, California

Dale O. Anderson, President, Greater North Dakota Association, Bismarck, North Dakota

Chellie Campbell, President, Cameren Diversified Management, Inc., NAWBO Public Policy Council, Pacific Palisades, California

Brooke Miller, NAWBO Chapter President, St. Louis, Missouri

John F. Robinson, President & C.E.O., National Minority Business Council, Inc., New York, New York

Lucille Treganowan, President, Transmissions by Lucille, Inc., NAWBO Chapter President, Pittsburgh, Pennsylvania

Wanda Gozdz, President, W. Gozdz Enterprises, Inc., NAWBO Public Policy Council, Plantation, Florida

Frank A. Buethe, Manager, Advance Business Development Center, Green Bay Chamber of Commerce, Green Bay, Wisconsin

Rachel A. Owens, Family Business Specialist, Mass Mutual, NAWBO Chapter President, Irvine, California

Brenda Dandy, Vice President, Marine Enterprises International, Inc., NAWBO Financial Services Council, Baltimore, Maryland

Terry E. Tullo, Executive Director, National Business Association, Dallas, Texas

Tana S. Davis, Owner, Tana Davis C.P.A., NAWBO Chapter President, Encino, California

Mary G. Zahn, President, M.C. Zahn & Associates, NAWBO Public Policy Council, Philadelphia, Pennsylvania

Gary Woodbury, President, Small Business Association of Michigan

Hector M. Hyacinthe, President, Packard Frank Organization, Inc., New York Delegation Chair—1986, White House Conference on Small Business, Ardsley, New York

Mary Ellen Mitchell, Executive Director, Independent Business Association of Wisconsin, NSBU Council of Regional Executives, Madison, Wisconsin

Susan J. Winer, President, Stratenomics, Illinois Delegation Chair—1986, White House Conference on Small Business, Chicago, Illinois

Lucy R. Benham, Vice President, Keywelland Rosenfeld, P.C., NAWBO Public Policy Council, Troy, Michigan

Beverly J. Cremer, Chief Executive Officer, I & S Packaging, NAWBO Chapter President, Kansas City, Missouri

C. Virginia Kirkpatrick, President/Owner, CVK Personnel Management & Training Specialists, NAWBO Financial Services Council, St. Louis, Missouri

Mary Ann Ellis, President, American Speedy Printing, NAWBO Chapter President, Boynton Beach, Florida

Shaw Mudge, Jr., Vice President, Operations, Shaw Mudge & Company, Connecticut Delegation Chair—1986, White House Conference on Small Business, Stamford, Connecticut

Eunice M. Conn, Executive Director, Small Business United of Illinois, NSBJ Council of Regional Executives, Niles, Illinois

Ronald B. Cohen, President, Cohen & Company, Immediate Past President, NSBJ, Cleveland, Ohio

Hilda Heglund, Executive Director, Council of Small Business Executives, Metropolitan Milwaukee Association of Commerce, Milwaukee, Wisconsin

Karin L. Kane, Owner/Operator, Dorrino's Pizza, NAVBO Chapter President, Salt Lake City, Utah

Suzanne F. Taylor, President & Owner, S.T.A. Southern California, Inc., Vice President—Public Policy Council, NAWBO, South Laguna, California

Suzanne Pease, Owner, Ampersand Graphics, NAWBO Chapter President, Morganville, New Jersey

Maryjane Rebick, Co-Owner, Executive Vice President, Copy Systems, NAWBO Public Policy Council, Little Rock, Arkansas

Arlene Weis, President, Heart to Home, Inc., NAWBO Public Policy Council, Great Neck, New York

Deepay Mukerjee, President, R.F. Technologies, 1995 Delegate, White House Conference on Small Business, Lewiston, Maine

David Sahagun, Dealer, Castro Street Chevron, 1995 Delegate, White House Conference on Small Business, San Francisco, California

Dona Penn, Owner, Gigantic Cleaners, NAWBO Public Policy Council, Aurora, Colorado

Barbara Baranowski, Owner, Condo Getaways, NAWBO Chapter President, North Monmouth, New Jersey

Sheelah R. Yawitz, President, Missouri Merchants and Manufacturers Association, Chesterfield, Missouri

David R. Pinkus, Executive Director, Small Business United of Texas, Texas Delegation Chair—1986, White House Conference on Small Business, Austin, Texas

David P. Asbridge, Partner, Sunrise Construction, Inc., 1995 Delegate, White House Conference on Small Business, Rapid City, South Dakota

Marj Flemming, Owner, Expeditions in Leadership, 1995 Delegate, White House Conference on Small Business, Signal Mountain, Tennessee

Jo Lee Lutnes, Owner, Studio 7 Public Relations, 1995 Delegate, White House Conference on Small Business, Columbus, Nebraska

Margaret Lescrenier, Vice President, Gammex RMI, Small Business Committee Member, Wisconsin Manufacturers and Commerce

Gordon Thomsen, Chief Executive Officer, Trail King Industries, Inc., 1994 Small Business Administration National Exporter of the Year, Mitchell, South Dakota

Leri Slonneger, NAWBO Chapter President, Washington, Illinois

Shalmerdean A. Knuths, Co-Owner/Director of Administration, Rosco Manufacturing Company, 1995 Delegate, White House Conference on Small Business, Madison, South Dakota

Alan M. Shaivitz, President, Allan Shaivitz Associates, Inc., 1995 Delegate, White House Conference on Small Business, Baltimore, Maryland

Linda Butts, President/Owner, Prairie Restaurant & Bakery, Member, NFIB, Carrington, North Dakota

Malcolm N. Outlaw, Owner/President, Sunwest Mud Company, Board Member, Small Business United of Texas, Midland, Texas

Suzanne Martin, Council of Smaller Enterprises, Greater Cleveland Growth Association, NSBJ Council of Regional Executives, Cleveland, Ohio

David L. Condra, President, Dalcon Computer Systems, 1995 Delegate, White House Conference on Small Business, Nashville, Tennessee

Doris Morgan, Vice President, Cherrybank, 1995 Delegate, White House Conference on Small Business, Hazlehurst, Mississippi

Dr. Earl H. Hess, Lancaster Laboratories, Inc., Pennsylvania Delegation Chair—1986, White House Conference on Small Business, Lancaster, Pennsylvania

Ralph S. Goldin, President, Goldin & Stafford, Inc., 1995 Delegate, White House Conference on Small Business, Landover, Maryland

John C. Rennie, President, Pacer Systems, Inc., Past President, NSBU, Billerica, Massachusetts

Murray A. Gerber, President, Prototype & Plastic Mold Company, Inc., Connecticut Delegation Chair—1986, White House Conference on Small Business, Middletown, Connecticut

Robert E. Greene, Chairman & CEO, Network Recruiters, Inc., 1995 Delegate, White House Conference on Small Business, Bel Air, Maryland

Jule M. Scofield, Executive Director, Smaller Business Association of New England, Waltham, Massachusetts

Jack Kavaney, President, Gateway Properties, 1995 Delegate, White House Conference on Small Business, Bismarck, North Dakota

Leo R. McDonough, President, Pennsylvania Small Business United, Pittsburgh, Pennsylvania

Sarah Lumley, Co-Proprietor, Save-A-Buck Auto Sales, 1995 Delegate, White House Conference on Small Business, Sumter, South Carolina

David A. Nicholas, General Manager, Dapco Welding Supplies, Inc., Hagerstown, Maryland

Joan Frentz, NAWBO Chapter President, 1995 Delegate, White House Conference on Small Business, Louisville, Kentucky

Bruce A. Hasche, Controller, Sencore, Inc., South Dakota Delegation Chair—1995, White House Conference on Small Business, Sioux Falls, South Dakota

Michael J. McCurdy, Franchisee, 7-Eleven, 1995 Delegate, White House Conference on Small Business, Baltimore, Maryland

Robert G. Clark, President, Clark Publishing, Inc., 1995 Delegate, White House Conference on Small Business, Lexington, Kentucky

Michael Stocklin, President, Flathead Business & Industry Association, Kalispell, Montana

Van Billington, Executive Director, Retail Confectioners International, NSBC Council of Regional Executives, Glenview, Illinois

Daniel L. Biedenbender, Vice President, Atlas Iron & Wire Works, Inc., National Treasurer, American Subcontractors Association, Milwaukee, Wisconsin

Earl B. Chavis, Owner, CTM Tech, Inc., 1995 Delegate, White House Conference on Small Business, Florence, South Carolina

Patricia F. Moenert, President & Owner, Moenert Executive Realty, Inc., Boynton Beach, Florida

Rudolph Lewis, President, National Association of Home Based Businesses, Owings Mills, Maryland

Robert F. Taylor, President, Erie Manufacturing Company, Board of Directors, Council of Small Business Executives, Milwaukee, Wisconsin

Duane E. Smith, Administrative Partner, Charles Bailly & Company, 1995 Delegate, White House Conference on Small Business, Billings, Montana

Gary Batey, General Manager, Independent Cement Corporation, Hagerstown, Maryland

G. Jesse Flynn, C.E.O., Flynn Brothers Contracting, Inc., 1995 Delegate, White House Conference on Small Business, Louisville, Kentucky

Frank J. Tooke, Montana Society of CPAs, 1995 Delegate, White House Conference on Small Business, Miles City, Montana

Brenda B. Schissler, President, StaffMasters, 1995 Delegate, White House Conference on Small Business, Louisville, Kentucky

Henry Carson III, Vice President, Henry Carson Company, Member, South Dakota Family Business Council, Sioux Falls, South Dakota

Roy H. Hunt, President & C.E.O., Hunt Tractor, Inc., Kentucky Delegation Chair—1995, White House Conference on Small Business, Louisville, Kentucky

Susan D. Cutaia, President, Tiger Security Products, 1995 Delegate, White House Conference on Small Business, Boca Raton, Florida

Charles F. Hood, Franchisee, 7-Eleven, Member, Baltimore Franchise Owners Association, Jarr, Maryland

Kenneth D. Gough, President, Accurate Machine Products Corporation, Chairman, Small Business Committee, Tri-Health Business Alliance, Johnson City, Tennessee

James W. Kessinger, President, Anderson Packaging, Inc., Kentucky Delegation Vice-Chair—1995, White House Conference on Small Business, Lawrenceburg, Kentucky

Charles Aiken, Owner, Health Force of Columbia, 1995 Delegate, White House Conference on Small Business, Columbia, South Carolina

Kay Meurer, President, Discount Office Interiors, 1995 Delegate, White House Conference on Small Business, Louisville, Kentucky

Kevin R. Nyberg, President, Nyberg's Ace Hardware, Member, National Retail Hardware Association, Sioux Falls, South Dakota

Tom Everist, President, L.G. Everist, Inc., Sioux Falls, South Dakota

Lewis A. Shattuck, Executive Vice President, Barre Granite Association, Member, Associated Industries of Vermont, Barre, Vermont

Tom Batcheller, President, Zip Feed Mills, Inc., 1995 Delegate, White House Conference on Small Business, Sioux Falls, South Dakota

Lalit K. Sarin, President & C.E.O., Shelby Industries, Inc., 1995 Delegate, White House Conference on Small Business, Shelbyville, Kentucky

Christine S. Huston, Manager, Economic & Business Development, Indiana Chamber's Small Business Council, NSBU Council of Regional Executives, Indianapolis, Indiana

Dean M. Randash, President, NAPA Auto Parts, 1995 Delegate, White House Conference on Small Business, Helena, Montana

Luis G. Fernandez, M.D., Director, Trauma Services, Mother Frances Hospital, Member, American College of Surgeons, Tyler, Texas

Ed Grogan, President & C.E.O., Montana Medical Benefit Plan, 1995 Delegate, White House Conference on Small Business, Kalispell, Montana

David Davis, President, Advanced Home Care, Inc., 1995 Delegate, White House Conference on Small Business, Unicoi, Tennessee

Joe Kropkowski, President, Baltimore Franchise Owners Association, Bel Air, Maryland

Susan Szymczak, President, Safeway Sling USA, Inc., Member, Metropolitan Milwaukee Association of Commerce, Milwaukee, Wisconsin

H. Victoria Nelson, Proprietor, Jarnel Iron & Forge, 1995 Delegate, White House Conference on Small Business, Hagerstown, Maryland

Helen Selinger, President, Sloan Products Company, Inc., 1995 Delegate, White House Conference on Small Business, Matawan, New Jersey

Charles B. Holder, President, Hol-Mac Corporation, 1995 Delegate, White House Conference on Small Business, Bay Springs, Mississippi

Marguerite Tebbets, President, Window Pretties, Inc., President, Women Business Development Center, Kennebunk, Maine

Catherine Pawelek, NAWBO Chapter President, Coral Gables, Florida

Mak Gonzenbach, Vice President, Valley Queen Cheese Factory, Inc., 1995 Delegate, White House Conference on Small Business, Milbank, South Dakota

Geoff Titherington, Owner, Bonanza, American Franchisees Association, Sanford, Maine

Richard Watson, Executive Vice President, Walker Machine Products, Inc., National Screw Machine Products Association, Collierville, Tennessee

Tonya G. Jones, President, Mark IV Enterprises, Inc., NFIE Guardian Advisory Council, 1995 Delegate, White House Conference on Small Business, Nashville, Tennessee

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

The Chair recognizes the Senator from South Carolina.

Mr. HOLLINGS. Mr. President, my distinguished colleague from West Virginia just thanked a group of people. I wondered who they were. I knew no lawyer who had ever tried a case in a courtroom would ever put up a bill of this kind. So, having sponsored this measure, they would have to have some extraneous help of some kind to fashion an abortion as this "conspiracy"—not conference—report. I emphasize "conspiracy," Mr. President.

The distinguished Senator from West Virginia says when you work with him, it is very close and everything else. Of course, he did not thank the Senator from South Carolina because we never got close because we never conferred and we never were told about a meeting. We could not see the draft. We heard first about this so-called conference, or conspiracy, report, with Richard Threlkeld on CBS at 7:20 last Thursday evening on the evening news, when he said it was coming up. I had yet to get a copy, even though I am a member of the conference, struggling around on Friday to try to find out what we were going to have.

The story down in the local press, the way they politically work it, was that the Senator from South Carolina was going to filibuster. We had not had a chance to debate. We had not had a chance to debate. But the point of the matter is that, as the Senator from West Virginia talks about small business, small business—look at the chart. That is not small business. I think he ought to talk more closely with the distinguished Senator from Washington, whom he has been working with, because they are not quite in step.

These heart pacemakers at $3,000, motorized wheelchairs, hotel bills, tonsillectomies, maternity stays, and all—maybe somebody is selling a baseball. We will let that one go by—18 cents. I hope we are not finding a Federal need up here, with all the States rights atmosphere, to all of a sudden pass a Federal law on account of 18 cents on the cost of a baseball.

We go through, and it is really sad, because, going right to the chart, we have never seen that before. I guess that is the option of those who do not have a case, to try to do it by sheer surprise. They came in first years ago—I will never forget it—and said there was a litigation explosion. You do not hear them arguing about the litigation explosion anymore.

They said there was an insurance crisis. We have here in the record that insurance companies are making billions and billions of dollars, so there is not that. Their reserves are up to an all-time high. They are doing great. So the insurance company is doing well, so you do not have that.

Then they had the matter of uniformity. Mr. President, they were going to get all the States together and have uniformity, but it is quite obvious that the many splendored thing, the test tube of federalism at the State level, clashed with that uniformity. And they created specific exemptions for those States who had more stringent requirements of an injured party. Those State laws could hold. Those who had less stringent laws would have to come under the stringent restrictions of this particular measure. So on the face of it, it showed absolutely no uniformity. So they gave up on uniformity, in a fashion.

Then they went to the matter of global competition. That is a sort of mystique around this Congress. We in Washington have discovered global competition. The matter of losing your job is psychological—the "anxiety society" they write about. "Downsizing." It is all so polite. Heck, they have been fired, and they moved the jobs overseas. Who has moved them? It is not global; it is us.

It is like the Spanish Civil War with the fifth column. Over half of what we are importing in here are American multinational generated. I used the figure that they had researched back in the late 1970's. It was 41 percent. I know over 50 percent of the imports are by 200 companies of the Fortune 500. They are the big, powerful people who can afford it. Small business cannot move overseas, but big business has moved overseas and continues, in a veritable hemorrhage. We explained it to everyone so they could understand the cost of manufacture. It was 30 percent of volume for the associates or workers, employees—you can save as much as 20 percent.

It is a given, if you move to a low-wage country, a $500 million company can save $100 million if they just keep their executive office here, their sales force, but move their manufacture to a low-wage country. They can move offshore and get rich, or they can continue to stay and work their own people and go broke. That is the trade policy of this Congress. These companies are not greedy. If I ran the company, if you ran the company, we would do the same thing. Competition has moved. So are we going to sit around here and wonder—what? That Congress is running around in a circle about term limits and all these other little funny things they can think of, including product liability that the States have long handled.

The distinguished Senator from Rhode Island got up and said "15 years, 15 years" the Congress has considered this issue. But the State of Rhode Island has responded. That is the mystery to me, that the proponents come around and act, all of a sudden, like they have discovered these things. Assume everything is true on that chart next to the Senator of Washington. What has the legislature of the State of Washington done about it? They have acted. The State of Georgia has acted. The State of South Carolina had product liability reform back in 1988. It was fully debated. But all of a sudden, we in Congress discover things. Why? Because we take a poll. None of these pollsters has ever served in public office, but they get the hot-button items, six or seven of them—and you have Victor Schwartz, that is a good one—saying how they went after the lawyers. They go after the doctors. Everybody is against the doctors, until they need one. Everybody is against the lawyers, until they need one. That is a given in society.

But you do not just pass Federal laws to vitiate the laws of the 50 States on a statute of repose. Take the referendum they had in the State of Arizona. The proponents of this measure say, "Forget about your referendum." They want to get back to the people, but "we are going to tell you from Washington what to do, State of Arizona, regardless of your referendum." So what is going on up here?

Now they come with the shunt. We are used to trying cases. You are limited to the record and the proof that you have, but this crowd just makes it up at the last minute. They have gone back to the products that have been kept off the market, and the shunt. I had not heard about the shunt, so we

called up the Food and Drug Administration and they said there is no problem.

Yes, Dow has been cited by our distinguished colleagues from Connecticut and Washington as going broke. It ought to go broke. They will never make—and a lot of other companies will never make—those implants like that again and try to sell them like hot cakes. Yes, sirree, that is what happens in our society, and we repair that kind of nonsense that goes on. Innocent women going in and thinking they are getting a health cure and instead they are ending their lives.

So Dow does not sell them anymore, but Applied Silicon sells silicon, Neusal sells silicon. And we get another list of those—that little bit of material that goes into the shunt that takes the water off the brain. The inference of the Senators here trying to use that argument is that children and individuals are going to die unless we pass product liability at the Federal level. Come on.

Take that chart next to the Senator from Washington. If a pacemaker costs $3,000, that has far more intricate materials than a shunt. They would take pacemakers off the market if you followed the logic of their argument. You could not afford $3,000 for that. I question that figure, to tell you the truth. I wish I had a chance to try it. My mother passed on just a few years ago, dying at 95 years of age, but she had four pacemakers and we never paid that. Maybe it is cheaper in Georgia and South Carolina than up here in this land—$18,000.

But let us assume the truth. If the truth is there, then pacemakers have to get off the market, using the logic of the argument about the shunt and a little bit of silicon material that goes into it. Come on. It is available. It is a false argument.

We are going to have to have a legislative congressional committee appointed on ski lifts, because it is only $2. It is way more dangerous than $2. I have been on them. The Presiding Officer has been on them. Get on one of those things and find out they are only spending $2 for safety. We have to get that up.

That is the real Federal problem. Their little charts. They had the coffee chart yesterday. They took down the coffee chart. At least they have some shame. We proved that punitive damages award had been cut. The judges in New Mexico have sense, but the coffee case had no sense. When the proponents finally found that out, they took the chart down.

What do they do here? Assuming all of that, as I say, is true, they act like the States have never acted before. I wanted to emphasize, too, coming in with this thing. Now let me read you this particular ad by the American pharmaceutical research companies, which appeared on the Federal page of the Washington Post on March 27, 1995. Here is what the American pharmaceutical group of manufacturers advertise in this ad:

> 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.

In this ad the pharmaceutical companies include a bar graph showing their steady increase in R&D investment since 1977. They spent $1.3 billion in 1977, $2 billion in 1980, $3.2 billion in 1983, $4.7 billion in 1986, $7.3 billion in 1989, $11.5 billion in 1992, and an estimated $14.9 billion in 1995.

Maybe they will go out and research a new kind of silicon—they spent almost $15 billion on overall research in 1995. But if you listen to the Senator from Connecticut and the Senator from Washington, you would think you cannot get the drugs on account of product liability; the drug companies are all going out of business.

In fact, the foreign drug companies are all coming from Europe over here like gangbusters and investing. I will have a list before we end this debate this morning of the pharmaceutical companies joining in and they are not complaining. They are coming from Switzerland to South Carolina and Hoffmann-La Roche is not complaining about product liability. Wellcome is coming in with Glaxo in North Carolina. They are not complaining about product liability. We have product liability laws in our States.

What they do in this measure, Mr. President, if you read it, goes way too far. We see this the more we now have a chance to look at it and wonder why. For example, I wondered why MADD came out against this bill, and then when I read that provision about punitive damages and substances—let us have all the drunk drivers not worry about punitive damages, do not worry about punishment, go ahead, drive drunk. Here we have the finest movement under MADD at the Federal and the State level. But this crowd now wants to write a bill so zealous about punitive damages and getting rid of it—at least one Senator said he did not even believe in punitive damages—that I can tell you now that they said tell the drunk drivers to go ahead, do not worry about punishment, drive. Tell the trial judge that you are obligated under the common law to charge the jury with the law, but keep it a secret.

The Senator from West Virginia said we do not have a cap. I guess that is the part he is reading in the bill, because as far as the jury knows, there is no cap. Why? Because that is the law under the common law, but they have a provision in here where the judge does not tell the jury about the law.

Now come on, what kind of laws are we passing here? Tell the drunk drivers, "Go ahead, drive drunk." Tell the judge who has the responsibility to stay out of the facts of the case, to, by gosh, keep the law secret and then come around and have a new hearing on the facts in violation of the Constitution.

The Cessna crowd, tell them now with the statute of repose, "Don't worry about it, as long as the part would last for 15 years." Most of the planes I have been flying in are more than that. When you fly around in a State in small planes, you will find they are more than 15 years old. But tell Cessna that they can go like gangbusters, do not worry about the parts.

There, shoot the Maytag man. Put him out of business. He does not have to stand there and say, "My refrigerator is not going to catch fire. It is 30 years old, and they still haven't called me to repair it." Shoot the Maytag man.

Blow up the furnaces. I went through a textile plant just the other day. It is 100 years old, but the machinery is brand new. They are competitive. When I first started, the shunts, as they call them, in the weaving machines used to be about 200; then they got to 400, then 1,500. The Japanese made machines up above that, I do not know how many thousands. They have the newest machinery.

Yes, somebody in the plant may have been hurt. But now, hereafter, when you have to put all that investment in there, do not worry about the cost of the safety of the worker after the machine is 15 years old. I think they will close down the textile show we have in Greenville for new machinery because we are going to pass the law that after 15 years you can forget about how safe a machine is. There is no more product liability. They will take the hindmost. Just get hurt. Do not worry about it. Let society take care of the injuries and everything else because the national Congress, in the face of the State laws and provisions that are working extremely well as of now, decided exactly what to do.

The utilities, oh, heavens, we had a good half-hour show on yesterday about the utilities. The utilities, now they did not want to write strict liability, so they wrote a double negative in the particular provision. Of course, the distinguished Senator had a difficult time trying to answer the questions because you could tell the lawyers downtown wrote this thing, not the staff. If the staff had written it, you would have seen somebody getting cussed out for writing that kind of thing. But the lawyers downtown were writing that thing up. They did not want to mention what they really meant.

That is, for the utilities, do not worry about the highest degree of care

we require in Georgia, South Carolina and the States of America because now we have a provision in here to tell the utilities to go ahead, forget about the highest degree of care.

Then, the corporate head was riding with his worker after work in the evening. They get into a wreck. A big trucking company runs the red light. The corporate head can get $16 million—no, excuse me, it says double economic damages. We had one corporate head making $16 million, so he could get a $32 million verdict. But the poor fellow sitting in the front seat with him has got a cap—the gentleman said it "ain't no cap" —but he gets $250,000. He is capped.

That is how the workers and consumers got this. The proponents of the bill discriminate against the people they say they are trying to help. They cannot name an organization of workers, consumers or others who are not affluent that favors this nonsense. The proponents come around and discriminate against those of modest means—the senior citizens, women, children.

Oh, on pain and suffering, well, they are compensated. They have to have another hurdle. We put in another hurdle for them regarding joint and several liability. Mr. President, they come right down to the wire.

I was watching this morning when the distinguished majority leader was on TV. He was talking about guns and the second amendment. Let me read two other amendments.

> In suits at common law [amendment VII], where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

They absolutely mandate it be reexamined by the trial judge. That is in violation of amendment VII.

Then amendment X:

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

The distinguished majority leader always comes and says, "Look, I have got here in my pocket" the 10th amendment—some carry around the contract. The distinguished senior Senator from West Virginia carries around the Constitution. The distinguished majority leader carries around the 10th amendment, until this.

When it comes to Medicaid, let the States handle it. When it comes to education, abolish the Department; that is a function of the States. When it comes to welfare, the Governors come in and say, let the States handle it. When it comes, by cracky, to crime, we have had a 2-year intramural around here trying to make sure that we get back to a program that we know did not work.

President Nixon put in LEAA, block grants, to the States. The next thing you know, they had a tank down in Hampton, VA, to protect the courthouse. I do not know what was going to attack the courthouse in Hampton. They had the Governor of Indiana buying a plane, a Beechcraft, so his wife could go and buy her clothes in New York. They were buying planes and buying tanks and everything else. Trying to get the money down to the officer on the beat was like delivering letters by way of a rabbit; you could not get it there.

At the time the city, the council, got it, the State, whatever, a politician got his hands on it. It was all for law enforcement, but law enforcement never saw it. But they say, "Oh, no, we've got to have block grants." After the experience where we had to abolish the LEAA, they come with this one on account of the political poll.

Lawyers. They have two giants, they say, the consumers and the trial lawyers, consumers and trial lawyers. The Senator from California emphasized what needs to be emphasized, and that is that we are looking out for individuals and individual injuries. It is not easy to try these injury cases. As we all know, less than 4 percent of all civil cases are product liability, less than 1 percent get to the courts, and product liability accounts for less than 1 percent of the cost of any of these products. They can keep on putting up charts, but the Conference Board refuted that. They said less than 1 percent of the cost of any of their articles were attributable to product liability. So what did we do? What did we do? We pass a totally unconstitutional measure. But more than anything else, Mr. President, the word "greed" has been used around here. I could not, in conscience, come and say, now, let us apply this all to injured individuals but not to injured businesses. Oh, no. No, no.

I see where United Airlines wants to sue that manufacturer of the baggage handler. It got loose up in Denver, that machine. We had one of those machines, Mr. President, when I was in college. It had the laundry where you sent your clothes over there, and it had a machine that ripped the buttons off your shirt and shot them through your socks. I know that machine now is up at the Denver airport. It tears up the package, rips into the bags, and skirts it into the gears, stopping everything.

So now, Mr. President, we have the business that can go ahead and get its way on punitive damages—do not worry about any $250,000, keeping it a secret, and then tell the trial judge later to start on his own factual findings and everything else like that in violation of the Constitution. Do not worry about any of that. Sue, like Pennzoil did Texaco—get a $10 billion verdict, $10.2 billion. That is more than all the product liability verdicts for injured matters in the last 20 years put together—$10.2 billion. Add them up. One business.

The overwhelming majority of product liability is businesses suing businesses. They believe when they get a bad product misrepresented, they ought to have a cause of action. But they have done everything in the world to put hurdles in this thing, unconstitutional provisions, separating the injured parties, separating the businesses out, making sure that the corporate heads and those of affluence get big economic damages. They can get big verdicts; not women, not children, not senior citizens who have retired. They have all of a sudden become second-class citizens.

That is the bill. It is a shame. I yield the floor.

Mr. GORTON. Mr. President, I think a few brief moments in outlining what this bill does and what it does not do may be particularly in order at this stage in the debate.

If we were to take at face value what we have heard from my distinguished colleague from South Carolina, coupled with his colleagues from Massachusetts and California, we would entirely lose sight of the fact that nothing in this bill limits in any respect the ability of any individual to recover a verdict in any court for all of the actual damages suffered by that individual as a result of what a jury may determine to have been a defective product.

Let me repeat that. The Presiding Officer, if he is injured by a defective product, will recover in the future, as he has in the past, all of his actual and provable damages. Obviously, there will be a difference in those damages from one person to another, even with similar injuries.

Second, Mr. President, nothing in this bill limits the ability of an injured person to recover as a result of a jury verdict all of the damages that jury may attribute to pain and suffering or to noneconomic damages.

I find the argument of the Senator from South Carolina particularly curious. He says this is a terrible bill because an executive making $2 million a year can recover more than someone making the minimum wage. Mr. President, that seems to me to be an argument that we ought to impose caps, caps that we have not imposed. Perhaps the Senator from South Carolina is suggesting a reform which no one, as far as I know, has ever proposed anywhere in the United States. That is, that there ought to be a cap on the economic damages that any individual can receive, and that if an individual making $100,000 loses a year of work, that person should not be able to recover any more than a person who makes $20,000, or vice versa. But that is a change in the law that, as far as I know, no one has ever proposed.

This bill allows you, Mr. President, to recover all of the actual damages

that you have suffered as a result of an accident that is the fault of some product, including your lost wages, based on whatever your wages are. Is that unequal justice because some people have higher wages than others? I do not think so. It also allows the jury to award you or anyone else whatever it may determine in the way of noneconomic damages.

We did have a debate on this subject in this body the first time around, not in connection with punitive damages but in connection with medical malpractice. There was an attempt on the floor to put a ceiling on the amount of noneconomic damages that could be recovered in a medical malpractice case. That proposition lost on the floor of the Senate, Mr. President, and ultimately the entire medical malpractice section was taken out of the bill, to be dealt with separately.

This bill proposed no such limit in committee, no such limit on the floor when it was being debated last year, and has no such limitations now. What is limited in any respect is the imposition of punitive damage awards—by definition, an award that is above and beyond all of the damages caused by the defective product.

My distinguished friend and colleague who is so complimentary to me, the Senator from West Virginia, has said that he would not vote for a bill that had an absolute cap on punitive damages. This is a field in which we disagree. I would. In fact, I do not believe, as an individual Senator, that there is any place in the civil justice system for punitive damages at all. They are not permitted in tort litigation in the State of Washington and in a handful of other States.

There are very few serious arguments made that there is no justice available for civil litigants as a result. There is an extremely strong argument, it seems to me, against punitive damages at all. Why should any individual recover more than a jury thinks that individual has actually suffered, especially when there is no limitation on the ability of the jury to make an award for pain and suffering for noneconomic damages in addition to the proven actual damages in a case?

We have a system in this country that is peculiar with respect to punitive damages designed as punishment without any limitations whatever. Every criminal code, for every crime up to and including first-degree murder and treason, has some kind of limitation. You cannot be executed twice for two murders. But with respect to punitive damages, in most places there are no limitations at all.

The Supreme Court of the United States has asked us to address this issue. I think we ought to address this issue. We do address it in a modest fashion in this bill, a very modest fashion, but only punitive damages, not any of the actual losses to any plaintiff in a product liability action whatever.

If you heard only the arguments on the other side of this case, you would think everyone was being denied justice, that no one was going to be able to recover their losses, their actual damages in a piece of product liability litigation.

Why should there be some predictability, some limitation on punitive damages? First, of course, because under the present system there can be an infinite number of actions with respect to the same product. We have a sentence, a punishment imposed, not with all of the protections of the criminal code, not with the usual unanimous jury requirement, but just at the total, complete and unfettered discretion of juries.

I think, as I say, that it is a terribly poor system. I did not prevail in my debates with my allies on my own side of the aisle or with my friend from West Virginia. I cannot remember what the views of my friend from Connecticut are on the subject. So we have a form of control which is not a cap. The Senator from West Virginia is entirely correct with respect to that; however, nothing with respect to requiring a company or an individual to pay its full share of the damages that it has caused, whether noneconomic or economic.

Mr. President, this bill is about people. I spoke yesterday, and speak again today, briefly, about young Miss Tara Ransom in the State of Arizona who has spoken to Senator MCCAIN and to people in my office about her silicon-based shunt for hydrocephalus.

The great and deep concern that she and thousands of others have about the availability of a medical device, which has literally given her life and made that life worth living, is that it is increasingly unavailable due to a present system of absolutely uncontrolled and unlimited punitive damages.

The next to the last paragraph in the article about this young lady from Arizona reads:

> The good news is that there are reform efforts underway in Arizona and at the Federal level. The Senate is planning to vote, as early as today, on legislation to place reasonable limits on punitive damages and eliminate unfair allocations of liability in all civil cases. This would protect all Americans —not just the manufacturers of medical products, but also small businesses, service providers, local governments, and non-profit groups. Above all, it would save children like Tara.

This is about American business, and competitiveness, and low prices for products. But it is even more about the people who use those products.

Finally, Mr. President, we get this nonsense about drunk drivers, this utter nonsense about the drunk drivers. Well, of course, nothing in this bill has anything to do with suing drunk drivers. The implication that it has something to do with suing the people who supply them with alcohol negligently, the so-called dram stop situation—well, this bill specifically says, "A civil action for negligent entrustment shall not be subject to the provisions of this section but shall be subject to any applicable State law."

That argument, Mr. President, is pure nonsense. This is a product liability bill. It is not a negligent entrustment bill. It has nothing to do with someone who deliberately sells a gun to someone to kill a third person, or deliberately allow someone to become drunk and is sued under dram stop statutes at all. It does have to do with product liability, with people like Tara Ransom, with companies like Cessna, with those who manufacture devices and therapeutic drugs, and a myriad of other products for the American people. It does have to do with giving them a better deal than the present system does, which is a lottery for plaintiffs and a bonanza for those who represent them.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, I yield the distinguished Senator from Alabama 15 or more minutes, as he may require.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama.

Mr. HEFLIN. Mr. President, I just found out that Senator ROCKEFELLER is going to vote for the conference report. Senator GORTON has said that Senator ROCKEFELLER could never vote for a bill if it had a cap in it, a definite cap. And as I read it—now, maybe he can, in some way or another, explain this language —we have a language on page 10 of the report relating to punitive damages. First, the language in the report says the "greater" of two times the sum of the amount awarded to a claimant for economic loss and noneconomic loss, or $250,000. That is not a definite cap because the amount of economic loss and noneconomic loss is a variable. But language immediately thereafter says, "special rule." This applies to the rule on punitive damages for small businesses where these corporations have 25 employees or less. I might add that this language applies also to individuals. The "special rule" provides that punitive damages shall not exceed the "lesser" of two times the economic loss and noneconomic loss, or $250,000. So punitive damages cannot exceed, in any event, $250,000. So that is a definite, established cap.

I am not going to hold Senator ROCKEFELLER to that since he did not make the statement to me. He must have made that statement to Senator GORTON who is present on the floor. I would not want to put him in an embarrassing situation. But I think this special rule shows very definitely that there is a cap in the bill.

Now, that also points out that a lot of language in this bill is slyly inserted, and so craftily placed, that I think some of its key features have escaped a great number of people's attention. That is true with regard to the biomaterials provision. The biomaterials provisions, to which Senator LIEBERMAN refers regarding raw materials, also contains language regarding component parts. There are numerous implants that have component parts. I mentioned before that I have a pacemaker which has numerous component parts. There is a battery, and there are various wires that go down into the chambers of the heart that causes electrical charges to emit; it has various sensors and a computer that records the history of my heartbeats over a period of time. When doctors check it, they can check and see whether or not there was some unusual rhythm or unusual activity taking place. Basically under the provisions of title II, on an implant that has component parts, there is complete immunity in regard to the supplier of the component parts, or the raw materials of an implant.

Now, there is an exception in the event the manufacturer of the component part is also the manufacturer of the entire device or also the seller. But most medical devices are made from component parts, such as the batteries, and people furnish those separately. Title II gives complete immunity to suppliers with no chance to even discover whether or not there was any negligence on the part of the supplier. It is interesting to see where the crafty language is written. It indicates that "implant" means—and this is the definition on page 17 of the conference report—

a medical device that is intended by the manufacturer of a device to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days, or to remain in contact with bodily fluids, or internal human tissue through a surgically produced opening for a period of less than 30 days.

Well, what is less than 30 days? I would assume that less than 30 days could mean 2 seconds or 1 second. It is very craftily designed. What is a surgically produced opening? Well, there is no definition in here, but a surgically produced opening would appear to me to be an opening in which you use surgical tools. Of course, that would mean that you normally think of a knife, of a scalpel, or of something like that. But what about intravenous materials, one of these locks where you tie it into you? You have devices where they put it in and out of your body, and they can put fluids into the body such as a blood transfusion. Consider a hypodermic needle—is that a surgical tube?

You have a situation where we find that title could have some applicability with a blood transfusion. We should consider where a blood transfusion occurs, and we know that blood has to be highly inspected and is subject to the highest standard of care because of AIDS and other matters. This bill is designed toward an interpretation that could mean that AIDS in blood is subject—where someone has made a mistake, who has been negligent or otherwise—to the provisions and the limitations and protections that are put within this bill.

It is very carefully crafted, as I pointed out yesterday, in inserting a comma in the definitions section of durable goods, now within the purview of the report is any type of a product that has a life of more than 3 years—baby cribs, lawn mowers, toasters, or virtually any type of kitchen appliance.

There are a great number of provisions in the bill that disturb me, in particular, the way that they are designed to favor the manufacturer or the seller, and it puts the injured party at such a disadvantage. For example, there is the misuse or alteration provision, which provides that in a product liability action, the damages of a defendant will be reduced by the percentage of responsibility for a claimant's harm attributable to the misuse or alteration. But I see problems where there could phantom defendants—the phantom defendants where there is nobody there to be held responsible—and they can try to invoke the several liability provisions in the report as to noneconomic damages. These phantoms are the ones that are all at fault and there is nobody left responsible for a claimant's injury.

Then we have a situation in regard to employer and coemployee, as to whether or not they might have misused or altered, or were at fault. So, in order to leave the impression on the jury, this bill requires that that be the last issue that is presented to a jury, because when they leave and go back to the jury room to decide, that is the last thing that they heard. So they are trying to put it off—the negligence or the lack of responsibility on the part of the manufacturer—and impose it on someone else and to give it to that person just as he goes into the jury room as the last thing that they hear that will be predominantly on their mind. Is that fair to the claimant?

There are numerous other aspects of that which disturb me. I suppose one of the things that I just cannot understand at all in regard to this is how—if it is good for the goose, why is it not good for the gander? And they exempt business losses. One business suing another business can bring his suit for commercial losses, losses of profit, unlimited amount, unlimited amount relative to punitive damages, and different statutes of limitation.

The Uniform Commercial Code, I assume, is uniform everywhere. I understand there are a few differences in it. But in our State in Alabama, you have a 4-year statute of limitations in regard to the Uniform Commercial Code. The conference report imposes a shorter 2-year statute of limitations.

The Senate-passed bill contained an exception to the 2-year statute-of-limitation provision stating that if a civil action under the bill is stayed or enjoined, the statute of limitation is suspended or tolled until the end of the injunction. That provision was deleted from the conference report. Is that fair? I think not.

I yield the floor.

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

Mr. GORTON. How much time remains?

The PRESIDING OFFICER. Thirty-four minutes.

Mr. GORTON. How much of that time does the Senator from Connecticut request?

I yield 15 minutes to the Senator from Connecticut.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. LIEBERMAN. I thank the Chair. I thank my friend from the State of Washington.

Mr. President, I have been thinking as I listened to the debate this morning, and what preceded it yesterday and before that, that there is a way of thinking around the Capitol that is not the way of thinking that I hear back home in Connecticut. It is what I call either-or. You know if an idea is put forward by a Republican, no Democrat shall be for it. If an idea is put forward by a Democrat, no Republican should be for it, or, in this case, if something is good for business, it has to be bad for consumers. That does not figure, particularly if you look at the overall effects of this bill.

What I want to contend here is that because of the extraordinary work done by Senators GORTON and ROCKEFELLER, and by the conferees from the Senate and the House, this is a win-win bill.

This is a bill that is good for consumers and good for business. In that sense, it is good for our country overall.

There is a way in which the opponents to the legislation approach it with such skepticism, turning every word in the most potentially damaging light and not considering the intentions of the sponsors and the authors and the record that we have tried constantly to build on the floor.

Everybody in America knows, at least most everybody knows, that our civil justice system is not working well. I do not think anybody really can stand up and defend the status quo of the litigation system in America. Nothing is wrong with it. That is preposterous. The average person on the street—I stop them in Hartford, New Haven, Bridgeport—knows that lawsuits take too long; that people do not get justice in a timely fashion; that too much of the money goes to lawyers. They know that.

I think the question is, how are we going to make it better? Why should we make it better? Because of the specific problems and shortcomings of the current system I just referred to and also because the public, the people have as little faith as the people of our country do today in our system of justice. That is a profound problem that goes beyond tort reform and anything else. It strikes at the very heart of people's faith in the Government they have. Lord knows, we know they have enough lack of confidence in the legislative branch, maybe some in the executive, but it goes to the judicial as well.

I honestly believe, deeply believe that this bill—moderate, modest, sensible, small, incremental reform—is a step in the direction of beginning to restore some faith in the system, making it work for people who are injured and making sure that it does not destroy faith in the system by punishing people who are not guilty and letting those who are guilty often off without being punished.

So I say this is win-win. It is good for business and it is good for consumers. It will create jobs by removing a deterrent to innovation and investment. It will reduce consumer prices by making litigation less expensive. If 20 percent of the costs that we are paying for a ladder is litigation-related costs, the cost of that ladder is going to go down if we can reduce that litigation cost some, and it goes on and on throughout the system.

I wish to talk particularly again about this biomaterials section of the bill of which I am a cosponsor. It comes from something that is very real that is threatening something very good. The very real element here is that there is an unnatural shortage of raw materials. Judge HEFLIN referred to it. Thank God, Judge HEFLIN is healthy and well today because of the pacemaker he has. He is one of 8 million people who have benefited from medical implants of one kind or another. The device is put together by a manufacturer but it takes parts they buy from people who do not make these parts particularly for this purpose. They are not making much money on selling those parts. Batteries are one. The information I put into the RECORD yesterday shows that one of the manufacturers of batteries—a couple actually—used in pacemakers have stopped selling to the manufacturers of pacemakers because they are afraid they are going to get sued for something that is not their fault. They would just as well sell the batteries to somebody else where the chance of a lawsuit is not as great. They are not worried about the negligence. They are worried about what it is going to cost them if they get tied up in a lawsuit.

In the debate there is such skepticism expressed about these medical devices and pharmaceutical companies, et cetera. Sometimes when I look back and read history and I say, now, how far have we really come; how much better is the human race? I wonder if we have ascended very far in the way in which we deal with one another.

However, there is one way we can objectively show that there has been extraordinary progress in human experience and that is in our health. We are living longer. You can see it year-by-year. We are up, I guess, in the mid-seventies now in terms of average lifespan. A lot of that has to do with pharmaceuticals, these wonder drugs that have been invented. And a lot of it has to do with these medical devices that we are trying to protect by making sure that the manufacturers can continue to get the parts, the materials and the component parts, and are not frightened out of supplying those parts because of the fear of lawsuits.

I said yesterday, when I talked about the allegations, the opponents of this bill keep lighting fires around the periphery to sort of stop people from voting for the bill. Those of us who support it put out one or two fires and there are three more burning over here. And one of the fires has been lit about how this bill would affect the existing breast implant procedure. I said at length yesterday—I will not repeat it today—the bill will not impact this procedure. This is prospective, only affects people who may file claims later. Breast implants are not being done any more. They were stopped by the FDA, except for a small number of clinical trials in 1992.

With regard to new products, you cannot escape liability under the biomaterials section of this bill, if you are not just a supplier but you are a manufacturer or a seller or what you have done is negligently done in the sense that it violates either the contract requirements that the manufacturer has given you for the raw material or component part, which obviously would be for a part or material that is not negligently made, or the specifications for that part that are issued as part of the approval process. Every one of these medical devices has to go through the FDA before it can be sold and used to benefit people.

Senator GORTON has spoken about one young girl and the extraordinary benefit to her life from the shunt that was put in her brain. We had testimony at a hearing I conducted from a Mr. Martin Reily of Houston, TX, about his young child, Thomas, who was discovered when he was 8 months old to have water on the brain, hydrocephalus. Mr. Reily said:

> Jane and I will never forget the Saturday in late October 1985, when we learned that Thomas had hydrocephalus. We initially were told that based on the level of fluid accumulated on his brain and the resulting pressure, he would surely have brain damage, probably severe. Surgery to place a shunt in Thomas was scheduled for the first thing Monday morning [2 days later]. The hours from late Saturday to Monday morning were the longest and darkest we have ever experienced.
>
> The thought of waiting even 1 day to have the surgery was almost unbearable, for each minute that passed the pressure was building in Thomas' head, which could further damage him. . . .
>
> On Monday morning, Thomas received a shunt. Within hours, he was showing improvement. His lethargy disappeared. He was alert. He smiled again for the first time in weeks and even stood up in his hospital crib. Within 36 hours, we were back home with the new Thomas. How different the outcome would have been for Thomas that day without the availability of the medical device he so desperately needed.

What a miracle. Mr. Reily continues:

> Six months after his original surgery, Thomas' shunt clogged and required revision. In the 6 hours that Thomas waited for his shunt revision surgery, he became violently ill, vomiting continuously and finally becoming semi-comatose. Mercifully, his revision was successful and immediately he regained his old form, laughing and smiling while playing games in his hospital bed. Again, how different yet predictably sad and final would have been Thomas' fate without this medical device. As I reflect on Thomas' brief life, I see a child who has already overcome a lifetime of medical difficulties.
>
> * * * * *
>
> Early on, Thomas' mother and I went through a grieving process. We were grieving for the death of our vision of our perfect child. It was not until we let that vision go that we were able to see something much more beautiful; a young boy with an indomitable yet loving spirit who will not let his personal medical setbacks defeat him. I think that must be surely God's spirit living inside him.

Mr. Reily concluded:

> So I stand before you today, as the guardian of that spirit, as Thomas' father, beseeching you to do everything in your power to ensure that the biomaterials necessary for Thomas' medical implant device be readily available and of the highest quality. For some time in the future, perhaps next month or next year, Thomas will wake me in the middle of the night to tell me that his head hurts and that he thinks his shunt has broken. He will ask if we can go to the hospital to get a new one right away. I pray I will be able to give him the only acceptable answer.

It is remarkable testimony. We had other testimony that day from a most impressive woman, Peggy Phillips, who has worked for awhile as chief of congressional affairs for the Air Force Surgeon General, going to law school in the evening, getting home at 10 p.m., working until midnight, and so on, office work, very busy. "However, on November 26, 1986," as she says, "my life changed. I am told that I collapsed as I walked from my office to my car. I stopped breathing. I had no pulse. I had no blood flow to my brain, I was clinically dead."

The story ends happily. She agreed to have an automatic implantable cardioverter defibrillator put into her stomach.

"Following a few minor adjustments," she says, "life with the AICD

has not been much different than before." She goes on to document changes that have occurred, and appeals to us to make sure that some of the simple parts of that AICD, which keeps her going, monitors her heartbeat, gives her a shock when there is a danger that her heart is going to stop, keeping her alive—that flow of materials is not going to stop.

These are consumers. Does this help business? It helps the businesses that make the medical devices; it helps Thomas Reily; it helps Peggy Phillips; it helps 8 million other people who are going to be kept alive, allowed to live normally by these devices.

Earlier this morning my friend from California made some references about the impact of this legislation—somewhat on breast implant cases which I have spoken to earlier—but on women generally. I do want to put into the RECORD a statement here. I am going to quote from it.

Phyllis Greenburger, who is the executive director of a group called the Society for the Advancement of Women's Health Research, testified on April 4, 1995, to that same Senate subcommittee, that, "* * * the current liability climate is preventing women from receiving the full benefits that science and medicine can provide. That," she says, "is the reason I am here before you today."

She went on to say:

. . . there is evidence that maintaining the current liability system harms the advancement of women's health research.

She completed her testimony by stating:

Manufacturers of raw materials, unwilling to risk lawsuits, are limiting, and in some cases, terminating the sale of their product for use in an implantable medical device. . . . The threat to health is further magnified in cases where suitable substitute materials are not available.

Women may be disproportionately impacted by such a shortage simply because they live longer than men, and as a result, suffer more from chronic disease, increasing their chances of needing a medical device, such as hip or joint replacements. For those of us currently in good health, the loss of these substances seems inconsequential. Yet for those like Peggy Phillips . . . [Whom I spoke of before] and others suffering from osteoporosis, heart disease, rheumatoid arthritis, and other diseases, access to a full range of medical devices is crucial.

I wonder if I might ask the Senator from Washington for 5 more minutes?

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. The Senator from Nebraska also wishes to speak on our side. Will the Senator from Connecticut settle for 2?

Mr. LIEBERMAN. I will settle for 3.

Mr. GORTON. Fine.

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

Mr. LIEBERMAN. A study by the Committee for Contraceptive Development, jointly staffed and administered by the National Research Council and the Institute of Medicine, found that only one major U.S. pharmaceutical company still invests in contraceptive research. Why? The study blamed the legal climate, fear of lawsuits, for this situation. H.R. 956, this bill before us, would make these drugs and other medical devices more available.

We have said over and over again, this bill protects the right of an injured plaintiff to get full recovery for damages, cost of medical care, loss of wages, any other provable item. It goes beyond, and says you can get recovery for noneconomic losses, intangibles like pain and suffering, from those who are responsible for the negligence.

It simply puts a small limit on punitive damages. In doing so, yes, it helps some businesses expand, provide the miraculous products I have talked about, sell products for less; but it helps millions of other people. In a way, the beneficiaries of this legislation are not so visible. That is why I read from this testimony. But they, and millions and millions of others of them, are counting on us to pass this bill to bring balance and trust back to our legal system.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

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.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. HOLLINGS. Mr. President, let me just for a minute respond.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I will yield to the distinguished Senator from Nebraska.

The distinguished Senator from Connecticut is very persuasive and I wanted to answer these pleading comments about "walking down the street" and "everybody knows the litigation system is in disrepair." Absolutely false, with respect to the civil justice system.

We have all seen the O.J. case and that jury of 12 let him go. But the American public jury did not let him go. Everybody knows that.

We have, here, just this past week, March 18, U.S. News & World Report:

In New York City, a movement is under way to impeach Criminal Court Judge Laurin Duckman. A 33-year-old woman sought court protection from a former boyfriend, a convicted rapist, who had attacked her three times. Despite the beatings, Judge Duckman coolly noted that the woman was "bruised but not disfigured," lowered bail in the case and suggested that the man would stop bothering the woman if she gave back his dog. Three weeks later, the man shot her to death.

In another case:

Police in a high-activity drug area at 5 a.m. noticed a slowly moving car with out-of-state plates. The car stopped, the driver popped the hood of the trunk and four men placed two large duffel bags inside. When police approached, the men moved away rapidly in different directions. One ran. Police searched the trunk and found 80 pounds of cocaine. The driver, a Michigan woman, confessed in a 40-minute videotaped statement, saying that this was just one of more than 20 large drug buys she had made in Manhattan. But Judge Baer ruled that police had conducted an unreasonable search. What about the men bolting from the scene? Since residents in the area regard cops as corrupt and abusive, opined the judge, it would have been unusual if the men hadn't run away, so fleeing was no cause for a search. In other words, the perps had reason to be suspicious of police, but police had no reason to be suspicious of the perps.

Come on. I ask unanimous consent to have this list of cases printed in the RECORD

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

(See exhibit 1.)

Mr. HOLLINGS. We are all disturbed about the criminal court system. But not, where the distinguished Senator from Connecticut served as the majority leader in the State legislature of Connecticut, he acts—"walking down the street," that he is the only one walking down the street talking.

Come on. We even had one former member went up as Governor and pull an income tax on the people of Connecticut, Governor Weicker. The people of Connecticut will respond, with leadership. And they do have a product liability statute in that State.

But these folks come and talk about fair. "Yes, I hope I can certainly get this shot so I can continue breathing." I mean, grown folks, men and women in the U.S. Senate, acting like this? That case would be thrown out. Talking about what is not good for the consumer, good for business.

I ask unanimous consent to have printed in the RECORD "Suing For Safety." It is by Thomas Lambert, Jr. I ask to have this printed in the RECORD, included with the "Stupid Court Tricks." Include them both.

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

(See exhibit 2.)

Mr. HOLLINGS. Mr. President, that "Suing for Safety" gives case after case after case where it had not been good for the consumer. The consumer had to get a trial lawyer, had to go before 12 jurors in his community, had to go up on appeal and pay all the court costs and finally get a verdict.

Why is it good for the consumer and good for the business? On account of product liability. We have it at the

State level, and it is working. That is why I put that case in the RECORD.

We know what business does. Some businesses will cut corners, they will not give warnings, they try to save money. Everybody knows there were a few dollars in the Pinto case. Now we see time and again, week after week, recalls. They just recalled one of my cars to put another safety device on.

Why do you think that was done? On account of the trial lawyers. Product liability. That is why they have done it, and everybody in the Senate knows it. But the little poll says get rid of the lawyers, like Dick the Butcher in Henry VI, "Kill all the lawyers." That is a popular thing.

So that is what we have. I reserve the remainder of my time.

EXHIBIT 1

[From U.S. News & World Report, Mar. 18, 1996]

STUPID COURT TRICKS

(By John Leo)

Some judges and some judges' decisions are better than others. Here are some others:

In New York City, a movement is under way to impeach Criminal Court Judge Laurin Duckman. A 33-year-old woman sought court protection from a former boyfriend, a convicted rapist, who had attacked her three times. Despite the beatings, Judge Duckman coolly noted that the woman was "bruised but not disfigured," lowered bail in the case and suggested that the man would stop bothering the woman if she gave back his dog. Three weeks later, the man shot her to death. In another domestic violence case, Judge Duckman allowed a beater to go free hours after a jury had found him guilty. Last month, the man was charged with another attack on the same woman.

North of the border, the loopiest judicial decision of the year came when the Canadian Supreme Court ruled that drunkenness was a defense against rape charges. It ordered a new trial for a Montreal man who had been convicted of sexually assaulting a 65-year-old woman in a wheelchair. The court predicted that the alcohol defense would be rare, but within weeks drunks and addicts were being acquitted across Canada. Sanity prevailed, however. Parliament passed a law banning the drunkenness defense.

Judge Rosemary Barkett, a Clinton appointee, has brought sexual harassment litigation into the fifth grade. Writing for the majority on the 11th Circuit Court of Appeals last month, she said that the mother of a fifth grader who was repeatedly pestered by another fifth grader could sue the school district under Title IX of the 1972 Education Amendments. In a recent dissent in another case, Barkett implied that a statute requiring drug tests for some state jobs in Georgia may violate the First Amendment by seeking to keep persons "who might disagree with the current policy criminalizing drug use" out of government.

Another Clinton appointee, Judge Harold Baer, caused a spreading uproar with his colorful botching of a drug case. Police in a high-activity drug area at 5 a.m. noticed a slowly moving car with out-of-state plates. The car stopped, the driver popped the hood of the trunk and four men placed two large duffel bags inside. When police approached, the men moved away rapidly in different directions. One ran. Police searched the trunk and found 80 pounds of cocaine. The driver, a Michigan woman, confessed in a 40-minute videotaped statement, saying that this was just one of more than 20 large drug buys she had made in Manhattan. But Judge Baer ruled that police had conducted an unreasonable search. What about the men bolting from the scene? Since residents in the area regard cops as corrupt and abusive, opined the judge, it would have been unusual if the men hadn't run away, so fleeing was no cause for a search. In other words, the perps had reason to be suspicious of police, but police had no reason to be suspicious of the perps. Since the confession stemmed from the search, Baer threw it out. The prevailing New York opinion: Judge Baer is an idiot.

Can the state legally confiscate the property of innocent people? The U.S. Supreme Court said yes this month in a Detroit case. A 5-to-4 ruling allowed confiscation of a 1977 Pontiac half-owned by a woman after her husband was arrested for having sex with a prostitute in the car. The Wayne County prosecutor's office had sued to confiscate the car under Michigan's public nuisance statutes. In a dry dissent, Justice John Paul Stevens said that until this case, no state had "decided to experiment with the punishment of innocent third parties."

In a notably tortured decision, the federal 10th Circuit Court of Appeals ruled that a male prisoner who wishes to become a female is not entitled to get hormone injections at public expense under the 14th Amendment, but he may be entitled to them under the Eighth Amendment, which bans cruel and unusual punishment.

Much egg is on the faces of federal judges of the Fourth Circuit Court of Appeals for their handling of the Rodney Hamrick case. While serving prison time for threatening the life of President Reagan, Hamrick built five bombs and threatened to blow up a courthouse, an airplane and NAACP headquarters. While serving more time for threatening to kill the judge in his case, he built and mailed a bomb to a U.S. attorney who had prosecuted him. The bomb fizzled, scorching the envelope but not detonating. Hamrick was convicted, but a three-judge panel of the Fourth Circuit reversed the conviction on grounds that the bomb was not a deadly or dangerous weapon because it had been badly built. This decision flew in the face of a relevant Supreme Court ruling that even an unloaded gun could be considered dangerous. For some strange reason, Solicitor General Drew Days did not request a rehearing on the Hamrick ruling by all the judges of the entire Fourth Circuit. But the judges decided to do so on their own, and they narrowly upheld Hamrick's conviction. Eight judges thought that the faulty bomb qualified as dangerous, while six judges disagreed. No word yet from Drew Davis. Is anybody in charge here?

EXHIBIT 2

[From the Trial magazine, November 1983]

SUING FOR SAFETY

(By Thomas F. Lambert, Jr.)

It has been well and truly said, "If you would plant for a year, plant grain; for a decade, plant trees; but if you would plant for eternity, educate a man." For nearly four generations, ATLA has been teaching its men and women, and they have been demonstrating to one another, that you can sue for safety. Indeed, one of the most practical measures for cutting down accidents and injuries in the field of product failure is a successful lawsuit against the supplier of the flawed product. Here, as well as elsewhere in Tort Law, immunity breeds irresponsibility while liability induces the taking of preventive vigilence. The best way to make a merchant responsible is to make him accountable for harms caused by his defective products. The responsible merchant is the answerable merchant.

Harm is the tort signature. The primary aim at Tort Law, of the civil liability system, is compensation for harm. Tort law also has a secondary, auxiliary and supportive function—the accident prevention function or prophylactic purpose of tort law—sometimes called the deterrent or admonitory function. Accident prevention, or course, is even better than accident compensation, an insight leading to ATLA's longstanding credo: "A Fence at the Top of the Cliff Is Better Than an Ambulance in the Valley Below."

As trial lawyers say, however, "If you would fortify, specify." The proposition that you can sue for safety is readily demonstratable because it is laced and leavened with specifics. They swarm as easily to mind as leaves to the trees.

ACCIDENT PREVENTION THROUGH SUCCESSFUL SUITS IN THE PRODUCTS LIABILITY FIELD

(1) Case for Charcoal Briquets Causing Death from Carbon Monoxide. Liability was imposed on the manufacturer of charcoal briquets for the carbon monoxide death and injury of young men who used the briquets indoors to heat an unvented mountain cabin. The 10-pound bags read, "Quick to Give Off Heat" and "Ideal for Cooking in or Out of Doors." The manufacturer was guilty of failure to warn of a lethal latent danger. Any misuse of the product was foreseeable because it was virtually invited. Next time you stop in at the local supermarket or hardware store, glance at the label on the bags of charcoal briquets. In large capital letters you will find the following: "WARNING. DO NOT USE FOR INDOOR HEATING OR COOKING UNLESS VENTILATION IS PROVIDED FOR EXHAUSTING FUMES TO OUTSIDE. TOXIC FUMES MAY ACCUMULATE AND CAUSE DEATH." Liability here inspired and exacted a harder, more emphatic warning, once again reducing the level of excessive preventable danger.

(2) Case of the Exploding Cans of Drano. When granular Drano is combined with water, its caustic soda interacts with aluminum, another ingredient in its formula and produces intensive heat converting any water into steam at a rapid rate. If the mixture is confined, the pressure builds up until an explosion results. The manufacturer's use of a screw-on top in the teeth of such well known hazard was a design for tragedy. The expectable came to pass (as is the fashion with expectability). In Moore v. Jewel Tea Co., a 48-year-old housewife suffered total blindness from the explosion of a Drano can with a screw-on top, eventuating in a $900,000 compensatory and $10,000 punitive award to the wife and a $20,000 award to her husband for loss of conjugal fellowship.

A high school chemistry student could see that what was needed was a "flip top" or "snap cap" designed to come off at a pressure of, say, 15–20 pounds per square inch. After a series of adverse judgments, the manufacturer substituted the safer flip top. Of course, even the Drano flip top will be marked for failure if not accompanied by adequate testing and quality control. Capers involved a suit for irreversible blindness suffered by 10-year-old Joe Capers when the redesigned flip top of a can of Drano failed to snap off when the can fell into the bathtub and the caustic contents spurted 8½ feet high impacting Joe in the face and eyes with

resulting total blindness. The shortcomings in testing the can with the reformulated design cost the company an award of $805,000. As a great Torts scholar has said, "Defective products should be scrapped in the factory, not dodged in the home."

Drayton v. Jiffee Chemical Corp., is a grim and striking companion case to the Drano decisions mentioned above, and it underscores the same engineering verities of those cases: the place to design out dangers is on the drawing boards or when prescribing the chemical formula. A one-year-old black girl suffered horrendous facial injuries, "saponification" or fusion of her facial features, when an uncapped container of Liquid-Plumr was inadvertently tipped over. At the time of the accident, this excessively and unnecessarily caustic drain cleaner was composed of 26 percent sodium hydroxide, i.e., lye. No antidote existed because, as the manufacturer knew, Liquid-Plumr would dissolve human tissue in a fraction of a second. To a child (or any human being) a chemical bath of this drain cleaner could be as disfiguring as falling into a pool of piranha fish. Liquid-Plumr, mind you, was a household product, which means that its expectable environment of use must contemplate the "patter of little feet," as the children's hour in the American home encompasses 24 hours of the day.

At the time of marketing this highly caustic drain cleaner, having made no tests as to its effect on human tissue, within the existing state of the art, the defendant could have reformulated the design to use 5 percent potassium hydroxide which would have been less expensive, just as effective and much safer. After some 59 other Liquid-Plumr injuries were reported to defendant, it finally reformulated its design to produce a safer product. In Drayton the defendant was allowed to argue in defense and mitigation that its management was new, that it had learned from its prior claims and litigation experience and that it had purged the enterprise of its prior egregious misconduct.

To open the courtroom door is often to open a school door for predatory producers.

(3) Case of the Tip-Over Steam Vaporizer. A tip-over steam vaporizer, true to that ominous description, was upset by a little girl who tripped over the unit's electric outlet cord on the way to the bathroom in the middle of the night. The sudden spillage of scalding water in the vaporizer's glass jar severely burned the 3-year-old child. The worst injuries in the world are burn injuries. The cause of the catastrophe was a loose-lidded top which could have been eliminated by adopting any one of several accessible, safe, practical, available, desirable and feasible design alternatives, such as a screw-on or child-guard top. The truth is that the manufacturer, Hankscraft, had experienced a dozen prior similar disasters. In the instant case, the little girl recovered a $150,000 judgment against the heedless manufacturer, impeaching the vaporizer's design because of lack of a screw-on or child-guard top. When the manufacturer, with icy indifference to the serious risks to infant users of its household product refused to take its liability carrier's advice to recall and redesign its loose-lidded vaporizer, persisting in its stubborn refusal when over 100 claims had been filed against it, the carrier finally balked and refused to continue coverage unless the company would recall and redesign. Then and only then did Hankscraft stir itself to redeem and correct the faulty design of its product, thereafter proudly proclaiming (and I quote), "Cover-lock top protects against sudden spillage if accidentally tipped." Once again Tort Law had to play professor and policeman and teach another manufacturer that safety does not cost: It pays. Under what might be called the Cost-Cost formula, the manufacturer will add safety features when it comes to understand that the cost of accidents is greater than the cost of their prevention. The Tip-Over Steam Vaporizer case is the most graphic example known to use showing that corporate management can be recalled to its social responsibilities by threat of stringent liability, enhanced by deserved civil punishment via punitive damages, and that belief in such a proposition is more than an ivory tower illusion.

A good companion case to the Tip-Over-Steam-Vaporizer case, serving the same Tort Touchstone of Deterrence, is the supremely instructive Case of the Remington Mohawk 600 Rifle. While a 14-year-old boy was seeking to unload one of these rifles, pushing the safety to the "off" position as required for the purpose, the rifle discharged with the bullet entering the boy's father's back, leaving him paralyzed and near death for a long time. The agony of his guilt, his feeling that he was to blame for his father's devastating injuries, pressed down on the boy's brow like a crown of thorns and almost unhinged his sanity. Assiduous investigation by the family's lawyer unearthed expert evidence of unsafe design and construction and lax quality control of the safety selector and trigger assemblies of the Mohawk 600.

The result of the exertions of the plaintiff's lawyer, deeply and redoubtedly involved in challenging the safety history of the rifle model, was a capitulation by Remington and an agreement to settle the father's claim (he was a seasoned and successful defense trial lawyer) for $6.8 million. Remington also wrote the son a letter, muting some of his anguish by stating that the weapon was the whole problem and that he was in no way responsible for his father's injuries. Then, facing the threat of cancelled coverage from its carriers for skyrocketing premiums in the projection of other multimillion dollar awards, Remington commendably served the public interest by announcing the recall campaign in which we see another electrifying example of Tort Law litigating another hazardous product feature from the market.

Remington's nationwide recall program affected 200,000 firearms; notices in newspapers and magazines similar to this one that appeared in the January 1979 issue of Field and Stream cut back on the harvest of hurt and heartbreak: "IMPORTANT MESSAGE TO OWNERS OF REMINGTON MODEL 600 AND 660 RIFLES, MOHAWK 600 RIFLES, AND XP-100 PISTOLS. Under certain unusual circumstances, the safety selector and trigger of these firearms could be manipulated in a way that could result in accidental discharge. The installation of a new trigger assembly will remedy this situation. Remington is therefore recalling all Model 600 rifles except those with a serial number starting with an 'A' . . . Remington recommends that prior to any further usage of guns included in the recall, they be inspected and modified if necessary. [Directions are then given for obtaining name and address of nearest Remington Recommended Gunsmith who would perform the inspection and modification service free of charge.]."

Tort Law forced Remington to look down the barrel and see what it was up against. Once again Tort Law was the death knell to excessive preventable danger.

For a wonderfully absorbing account of the Mohawk 600, see Stuart M. Speiser's justly praised Lawsuit (Horizon Press, New York, 1980) 348–55.

(4) Case of MER/29, the Anti-Cholesterol Drug Which Turned out to Cause Cataracts. Many trial lawyers will recall the prescription drug MER/29 marketed for its benign and benevolent effect in lowering blood cholesterol levels and treating hardening of the arteries but which turned out to have an unpleasant and unbargained-for effect on users, the risk of causing cataracts. As Peter DeVries recently observed, "There is nothing like a calamity to help us fight our troubles." Blatant fraud and suppression of evidence from animal experiments were proved on the manufacturer's part in the marketing of this dangerous drug. Who did more—the federal government or private trial lawyers—in getting this dangerous drug off the market and compensating the numerous victims left in its wake? The question carries its own answer. The United States drug industry has annual sales of 16 billion dollars per year, while the Food and Drug Administration has an annual budget of 65 million dollars to oversee all drug manufacture, production and safety. How can the foothills keep the Alps under surveillance? Worse, as shown by the MER/29 experience, enforcement of the law in that situation, far from being vigorous and vigilant, was lame, limp and lackluster. It was only private suits advanced by trial lawyers that furnished the real muscle of enforcement and sanction, compensation for victims, deterrence of wrongdoing, and discouragement of corporate attitudes toward the public recalling that attributed to Commodore Vanderbilt.

As to the indispensible role and mission of the trial lawyer in Suing for Safety, it should not be overlooked that the current Administration has moved to sharply restrict the regulation of product safety by the Consumer Product Safety Commission. The 1982 budget for the commission was reduced by 30 percent in the first round of Reagan Administration budget cuts and is marked for further cuts in the future.

As the Thalidomide, MER/29, Dalkon Shield, Asbestos, DES, Slip-into-Reverse Transmissions and Fuel Tank scandals have been starkly revealed, we have crime in the suites as well as crime in the streets. Corporate culpability calls for corporate accountability, and our society has developed no better instrument to encourage socially responsible corporate behavior than the vehicle of adverse judgments beefed up by punitive damages. In the MER/29 situation, for example, the criminal fines levied on the corporate producer and its executives were slap-on-the-wrist trivial when contrasted with the deterrent impact of punitive damage awards in current uncrashworthiness cases where flagrant corporate indifference to public safety was established.

Our leading scholar in the field of punitive damages, writing with verve and virtuosity on that subject, concluded in 1976 that punitive damages awards should be permitted in appropriate products liability cases. Writing in 1982 with the same unbeatable authority, Professor David G. Owen traces the ferment and developments of doctrine in the ensuing years and then delivers a conclusion informed by exhaustive research, seasoned reflection, and an obvious morality of mind. "I remain convinced of the need to retain this tool of legal control over corporate abuses. . . ."

(5) Case of the Infant Who Died from Drinking Toxic Furniture Polish Where Manufacturer Failed to Warn Mother to Keep Toxic Product out of Reach of Children. This

is the celebrated case of Spruill v. Boyle-Midway, Inc., in which a 14-month-old child reached over from his crib and pulled a doily off a bureau, causing a bottle of Old English Red Oil Furniture Polish, manufactured by the defendant, to fall into the toddler's crib. During the few minutes his mother was out of the room, the baby got the cap off the bottle and drank a little bit of the polish. He was dead within two days of resulting chemical pneumonia. The bottle had a separate warning about combustibility in letters ⅛ inch high, but only in the midst of other text entitled "Directions" in letters 1/32 inch high did it say "contains refined petroleum distillates. May be harmful if swallowed, especially by children." The mother testified that she saw the warning about combustibility but did not read the directions because she knew how to use furniture polish. In a negligence action against the maker, the jury found that both defendant and the baby's mother were negligent and awarded wrongful death damages to the child's father and siblings but not to the mother. The Fourth Circuit in keeping with the grain of modern authority held that it was irrelevant that the child's ingestion of the toxic polish was an unintended use of the product. The jury could properly find that in the absence of an adequate warning to the mother that she could read and heed—to keep the polish out of the reach of children—such misuse of the product was a foreseeable one. The defect was to be tested not only by intended uses but by foreseeable misuses.

The jury could find that the manufacturer's placement of the warning was designed more to conceal than reveal, especially in view of the grater prominence given the fire warning (⅛ of an inch compared to the Lilliputian print, 1/32 of an inch, as to the contents containing "refined petroleum distillates"). The poison warning could be found to fall short to what was required to convey to the average person the dangerous nature of this household product. The label suggested that harm from drinking the polish was not certain but merely possible, while experts on both sides agreed that a single teaspoon would be lethal to children.

The warning in short could properly be found to be inadequate—too soft, mispositioned and not sufficiently eye-arresting. Defendant admitted in answer to interrogatories that it knew of 32 prior cases of poisoning from ingestion of its "Old English Red Polish."

Did the imposition of liability in this seminal Spruill case supra stimulate, goad or spur the manufacturer to take safety measures against the foreseeable risk of ingestion by innocent children? A trip to the local hardware store a couples of days ago reveals that Old English Red Oil Polish now sports the following on its label: "DANGER HARMFUL OR FATAL IF SWALLOWED. COMBUSTIBLE. KEEP OUT OF REACH OF CHILDREN. SAFETY CAP."

An error is not a mistake unless you refuse to correct it.

(6) Case Holding Manufacturer of PAM (Intended to Keep Food from Sticking to Cooking Surfaces) Liable for Death of Teen-Ager from Inhalation of PAM's Concentrated Vapors. Harless v. Boyle-Midway Div. of Amer. Home Products, involved an increasing number of teenagers who were dying of a "glue-sniffing syndrome," inhaling the concentrated vapors of PAM, a household product intended to keep food from sticking to cooking surfaces. Originally, the manufacturer used only a soft warning on the can's label: "Avoid direct inhalation of concentrated vapors. Keep out of the reach of children." However, to the knowledge of defendant, the children continued sniffing and dying. Then the manufacturer, as an increasing number of lawsuits were pressed upon it for the preventable deaths of such children, changed the warning on its labels, shifting to harder warning: "CAUTION: Use only as directed, intentional misuse by deliberately concentrating and inhaling the contents can be fatal." This was, of course, a much harder and more emphatic warning. The Fifth Circuit held that it was reversible error to exclude plaintiff's evidence (in an action for the wrongful death of a PAM-sniffing 14-year-old) that no deaths had occurred from PAM sniffing after the defendant had hardened its warning by warning against the danger of death, the ultimate trauma.

On remand the jury brought in a verdict for the boy's estate in the amount of $585,000 with an additional finding by the jury that the lad's administrator was entitled to an award of punitive damages. Prior to the punitive damages suit, the case was settled for a total of $1.25 million. It was uncontested that prior to the lad's death the manufacturer knew of 45 inhalation deaths from foreseeable misuse of its product, and upon remand admitted to an additional 68 from the same expectable cause.

If you will examine the label on the can of PAM on your shelf, as the writer has just done, you will find: "WARNING: USE ONLY AS DIRECTED. INTENTIONAL MISUSE BY DELIBERATELY CONCENTRATING AND INHALING THE CONTENTS CAN BE HARMFUL OR FATAL." Once again the pressures of liability stimulated a producer to avoid excessive preventable dangers in its product's use by strengthening its warning label, thereby enhancing consumer protection.

(7) Case of the Poisonous Insecticide Holding That Warnings Must Contain Appropriate Symbols. Such as Skull and Crossbones, Where Manufacturer knows That Product May Be Used by Illiterate Workers (Spanish-Speaking Imported Puerto Rican Laborers) Who Would Not Understand English. This is the salutary holding in the celebrated case of Hubbard-Hall Chem. Co. v. Silverman. The First Circuit upheld judgments entered on jury verdicts for the wrongful death of two illiterate migrant farm workers who were imported by a Massachusetts tobacco farmer and killed by contact with a highly toxic insecticide manufactured and distributed by defendant. Even though the comprehensive and detailed danger warnings on the sacks fully complied with label requirements of the Department of Agriculture, the jury could properly find that because of the lack of a skull or crossbones or other comparable symbols the warning was inadequate. Use of the admittedly dangerous product by persons who were of limited education and reading ability was within the range of apprehension of the manufacturer. While evidence of compliance with governmental regulations was admissible, it was not decisive. Governmental standards are "minimums," a floor not a ceiling, and so far as adequate precautions are concerned, federal regulations do not oust the possibly higher common-law standards of the Commonwealth of Massachusetts.

The steady, unflagging pressures of litigation against the inertia, complacency and moral obtuseness of manufacturers have not only resulted in enhanced safety in the field of conscious design choices (substituting child-guard screw-on tops on tip-over steam vaporizers or over-the-axle fuel tanks for those mispositioned more vulnerably in front of the axle or adding rear-view mirrors to blind behemothic earth-moving machines whose design obstructs the vision of a reversing operator, etc.) But also in inducing product suppliers to reduce marketing defects in the products they sell by strengthening the adequacy of the instructions and warnings that accompany their products set afloat in the stream of commerce.

The net effect of such benign and beneficial litigation has been to improve the adequacy and efficacy of the educational information given to consumers by producers via improvements in the conspicuousness of warnings given; making them more prominent, eye-arresting, comprehensive, complete and emphatic; placing the warnings in more effective locations; avoiding ambiguous warning; extending warnings to the safe disposition of the product; and avoiding any dilution of the warnings given. In short, the bottom line, as indicated in the cited representative sampling of cases, is that successful lawsuits operate as safety incentives to "inspire" product suppliers to furnish instructions and warnings that are in ratio to the risk and in proportion to the perils attending foreseeable uses of the marketed products.

Here, too, we see the conspicuous usefulness of the lawsuit as the weapon for ferreting out marketing defects, whether ingenious or ingenuous, in selling dangerously defective products.

(8) Case of Marketing Carbon Tetrochloride Using Warnings Found to Be Inadequate Because Inconspicuous. Suppose a defendant sells carbon tetrachloride and places on all four sides of the can, in large letters, the words "Safety Kleen," and then uses small letters (Lippiputian print) to warn of the serious risk of using the cleaning fluid in an unventilated place (or places the fine print warning only on the bottom of the can). It requires no tongue of prophecy to predict that this warning will be found inadequate because too inconspicuous. It was so held in Maize v. Atlantic Refining Co. Not only was the warning inadequate because not conspicuous enough, but the representation of safety ("Safety Kleen") operated to dilute, weaken, and counteract the warning. Moreover, in Tampa Drug Co. v. Wait, the court upheld a judgment for the wrongful death of a 38-year-old husband who died from carbon tetrachloride poisoning after using a jug of the product to clean the floors of his home. While the label warned that the vapor from the liquid was harmful and that prolonged breathing of it or repeated contact with the skin should be avoided and that the product should only be used in well ventilated areas, the court with laser-beam accuracy ruled that the warning nonetheless could be found inadequate because of its failure to warn with qualitative sufficiency as to deadly effects or fatal potentialities which might follow from exposure to its fumes.

Decisions such as Maize and Wait supra were the prologue and predicate for the action taken by the FDA in 1970, under the Federal Hazardous Substances Act, to ban and outlaw carbon tetrachloride.

Torts archivists know that successful private lawsuits to recover for harm from products simply too dangerous to be sold at all, regardless of the completeness or urgency of the warning given, frequently lead to a recall and reformulation of the product's design or to a decision to ban the product from the market. Life and limb are too important to trade off against unmarketed inventory.

(9) Case of the 8-Year-Old Boy Who Choked to Death from Strangling on a Quarter-Inch

Rubber Rivet, Part of a Riviton Toy Kit Given Him for Christmas. This case will indeed rivet the attention (in the sense of attract, fasten and hold) of concerned citizens who wish to understand how the threat of liability operates as a spur to safety on the part of product producers. The present example involves a toymaker whose work is indeed "child's play."

Parker Brothers, a General Mills subsidiary headquartered some 18 miles north of Boston, had big plans for Riviton. This was a toy kit consisting of plastic parts, rubber rivets and a riveting tool with which overjoyed children could put together anything from a windmill to an airplane. In the first year on the market in 1977, the Riviton set seemed on its way to becoming one of those classic toys that parents will buy everlastingly. However, one of the 450,000 Riveton sets bought in 1977 ended up under the Christmas tree of an 8-year-old boy in Menomonee Falls, Wis. He played with it daily for three weeks. Then he put one of the quarter-inch-long rubber rivets into his mouth and choked to death. Ten months later, with Riveton sales well on their way to an expected $8.5 million for the year, a second child strangled on a rivet.

What should the company do? Just shrug off the two fatal child strangulations, ascribe the deaths to freakish mischance, try to shift the blame to parental failure to supervise and police their children at play, or assign responsibility to the child's abnormal misuse or abuse of their product? Could not the company cap its disavowal of responsibility by a bromidic disclaimer that, "After all, peanuts are the greatest cause of strangulation among children and nobody advocates the banning of the peanut."

However, as manufacturers, Parker Brothers well knew that they would be held liable to an expert's skill and knowledge in the particular business of toymaking and were bound to keep reasonably abreast of scientific knowledge, discoveries and hazards associated with toys in their expectable environment of use by unsupervised children in the home. The toymaker knew that the Riveton set must be so designed and accompanied by proper instructions and warnings that its parts would be reasonably safe for purposes for which it was intended but also for other uses which, in the hands of the inexperienced, impulsive and artless children, were reasonably foreseeable. When you manufacture for children, you produce for the improvident, the impetuous, the irresponsible. As a seasoned judge put it: "The concept of a prudent child, God forbid, is a grotesque combination." Much must be expected from children not to be anticipated when you are dealing with adults, especially the propensity of children to put dangerous or toxic or air-stopping objects into their mouths. The motto of childhood seems to be: "When in doubt, eat it." Knowledge of such childish propensity is imputed to all manufacturers who produce products, especially toys, which are intended for the use of or exposure to children. Cases abound to document this axiom.

Recently, Wham-O Manufacturing Co. of San Gabriel, Calif., voluntarily recalled its Water Wiggle, a garden hose attachment that drowned a child when it jammed in its throat. Still more recent, Mattel, Inc. of Hawthorne, Calif., initiated a recall of missiles fired by its Battlestar Gallactica toys when a 4-year-old boy inhaled one and died. The manufacturer of a "Play Family" set of toy figurines would have been well advised to pull from the market and redesign the small carved and molded figures in the toy set, intended for children of the teething age. A 14-month-old child swallowed one of the toy figures 1¾" high and ⅞" in diameter, and before it could be extricated from his throat at a hospital's emergency room, the child was reduced to vegetable status as a result of irreversible brain damage from the toy's windpipe blockage of air supply to the brain. The manufacturer's dereliction of design and lack of product testing were to cost it a $3.1 million jury verdict for the child and his parents.[24]

Against the marketing milieu and the legal setting sketched above, what should be the proper response of Parker Brothers, manufacturers of the Riviton toy set, when its executives learned of the second child's death from strangulation on the quarter-inch rubber rivet in the toy kit? Should they have tried to tough it out or luck it out in the well known lottery called "do nothing and wait and see"? The company was sensitive not only to the constraints of the law (liability follows the marketing of defective products), but also to the imperatives of moral duty and social responsibility, and the commercial value of an untarnished public image. Parker Brothers decided to halt sales and recall the toy. As the company president succinctly stated, "Were we supposed to sit back and wait for death No. 3?"

Business, the Frenchman observed, is a combination of war and sport. Tort Law pressures business to realize how profitless it may provide to war against children or to trifle and jest with their safety. The commendable conduct of Parker Brothers in this case is one of the most striking tributes we know to the deterrent value and efficacy of Tort Law and the example would make a splendid case study for the nation's business schools.

(10) Case of the Recycling Washing Machine That Pulled Out a Boy's Arm. In Garcia v. Halsett, the plaintiff, an 11-year-old boy, sued the owner of a coin-operated laundromat for injuries inflicted while he was using one of the washing machines in the launderette. He waited several minutes after the machine had stopped its spin cycle before opening the door to unload his clothing. As he was inserting his hand into the machine a second time to remove a second handful of clothes the machine suddenly recycled and started spinning, entangling his arm in the clothing, causing him serious resulting injuries. The evidence was clear that a common $2 micro switch—feasible, desirable, long available—would have prevented the accident by automatically shutting off the electricity in the machine when the door was opened. The reviewing court held the launderette owner strictly liable for defective design because the machine lacked a necessary safety device, an available micro switch. Shortly thereafter the defendant obtained 12 of these micro switches and installed them himself on the machines. Once again, the threat of tort liability serves to deter—the prophylactic purpose of Tort Law at work. The deterrent function of Tort Law is not just an idea in the air; it has landing gear, has come down to earth and gone to work.

SUMMARY

The foregoing 10 cases and categories are merely random and representative examples, not intended to be complete or exhaustive, of the deterrent aim and effect of Tort Law in the field of product failure or disappointment.

It needs to be emphasized that the preventive aim of Tort Law is pervasive and runs like a red thread throughout the entire corpus of Torts. For example, the private Tort litigation system has served, continues to serve, as an effective and useful therapeutic and prophylactic tool in achieving better health care for our people by discouraging and thereby reducing the incidence of medical mistakes, mishaps and "misadventures." An error does not become a mistake unless you refuse to correct it. For example, successful medical malpractice suits have induced hospitals and doctors to introduce such safety procedures as sponge counts, electrical grounding of anesthesia machines, the padding of shoulder bars on operating tables, and the avoidance of colorless sterilizing solutions in spinal anesthesia agents. Remember, the fraudulent butchery practiced on defenseless patients by the notorious Dr. John Nork was not unearthed, pilloried or ended by the vigilant action of hospital administrators, peer review groups, or medical societies but by successful, energetically pressed malpractice actions prosecuted by trial lawyers in behalf of the victimized patients.

So we come full circle and end as we began: Accident Prevention Is Better Than Accident Compensation: "A Fence at the Top of the Cliff Is Better Than an Ambulance in the Valley Below." A successful lawsuit and the pressures of stringent liability are one of the most effective means for cutting down on excessive preventable dangers in our risk-beleaguered society.

My hero in the foregoing chronicle of good lawyering has been the hard-working trial lawyer with his care, commitment and concern for public safety, the civil religion of us all.

He more than any other professional has proved that we can indeed Sue for Safety. My tribute to him is in words Raymond Chandler used to salute his hero: "Down these mean streets a man must go who is not himself mean, who is neither tarnished nor afraid."

PRODUCT LIABILITY DOES NOT EXTEND TO NEGLIGENT ENTRUSTMENT

Mr. ROCKEFELLER. Will the Senator from Washington yield for a question about the applicability of the bill?

Mr. GORTON. Yes, I would be glad to do so.

Mr. ROCKEFELLER. Mr. President, we have been seeing a lot of paper about this conference reports' effects on so-called dram shop laws which allow victims of drunk driving crashes to seek recovery from those individuals or establishments who negligently sell, or serve, alcoholic beverages to persons who are intoxicated or to minors who subsequently kill or injure someone while driving under the influence.

Mr. GORTON. Yes, we have. I believe those laws can be valuable and help enhance highway safety and antidrunk driving initiatives, as well as encourage the responsible service of alcoholic beverages. Section 104 of the conference report is an example of a provision in the very bill we are considering which tries, in a small way, to discourage alcohol and drug abuse in this country. Section 104 tells persons that, if they are drunk or on drugs and that is the principal cause of an accident, they will not be rewarded through the product liability system.

Mr. ROCKEFELLER. I agree. I am troubled that I continue to hear opponents of product liability reform, claim that these laws will be adversely affected by the proposed legislation.

Mr. GORTON. The short response, Senator, is these laws will not be adversely affected or affected in any way. The Senate Commerce Committee report, which has been adopted as the legislative history of the conference report, states unequivocally at page 25, footnote 90:

[T]he provisions of the Act would not cover a seller of liquor in a bar who sold to a person who was intoxicated or a car rental agency that rents a car to a person who is obviously unfit to drive or a gun dealer that sells a firearm to a "straw man" fronting for children or felons. These actions would not be covered by the Act, because they involved a claim that the product seller was negligent with respect to the purchaser and not the product. Such actions would continue to be governed by state law.

Clearly, H.R. 956 will not in any way affect State law regarding the liability of those individuals who serve additional alcohol to persons who are obviously under the influence. Similarly, H.R. 956 will not affect State law regarding the liability of a product seller who fails to exercise reasonable care in selling a weapon, such as a handgun, to a minor or known criminals. The legislation also will not affect State law regarding the liability of a rental agency that fails to exercise reasonable care by renting an automobile to someone who, at the time, is obviously unfit to drive.

Mr. ROCKEFELLER. Mr. President, I think we should say to our colleagues that the product seller provision's application does not mean that these cases will be affected.

Mr. GORTON. The Senator is absolutely correct, these cases are not affected. First and foremost, this is a product liability bill and it applies to product liability actions. Product liability actions generally involve harm caused by alleged product defect.

As all are aware, the harm in cases involving drunk drivers is often severe, indeed, and may even mean the death of an innocent person or a child. It is important, however, to avoid the misleading arguments by those who oppose legal fairness and who intentionally attempt to confuse product liability actions, which are covered by the conference report, with negligent entrustment cases, which are not covered by the legislation. As in the past, they use attention-getting, but totally irrelevant examples, such as drunk driving cases and gun violence.

Mr. ROCKEFELLER. And that remains true, regardless of the fact that the applicability section of the conference report, says that the act applies to "any product liability action brought in any State or Federal Court on any theory for harm caused by a product." Is that not right?

Mr. GORTON. The reason for this broad definition is to assure that the bill covers all theories of product liability, such as negligence, implied warranty, and strict liability. It is not broadly defined in order to extend to cases beyond product liability, and certainly not to extend the bill to cases involving negligent entrustment, such as in cases involving the sale of alcohol to an obviously intoxicated individual or the sale of a gun to a known felon.

Mr. ROCKEFELLER. Mr. President, section 103 of the bill, the so-called product sellers provision, imposes liability when a product seller fails to exercise reasonable care with respect to a product. If a tavern owner fails to exercise reasonable care in selling alcohol to an intoxicated person, would that case be subject to the bill?

Mr. GORTON. No. The case against the tavern owner is based on the tavern owner's action; it is not based on an alleged defect in the product, that is, the alcohol. Cases in which a tavern owner sells alcohol to an intoxicated person involve negligent entrustment and are not subject to the provisions of the conference report; State law continues to apply.

To hold that such laws were affected by the bill would be a clear and obvious misconstruction of the bill. To make this clear, one only need look to the acts covered by product sellers in the conference report. This appears in the definition of product seller, which is set forth in sections 101(11)(B), 101(16)(A). H.R. 956 is applicable to product sellers, "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 definition then addresses those things where the product seller "produces, creates, makes, constructs, designs, or formulates * * * an aspect of the product * * * made by another." This is classic product liability and simply does not apply to the negligent tavern owner.

Mr. ROCKEFELLER. And would you agree with me that the "product sellers" provision, as it applies to rented or leased products (section 103(c)(2)) in the conference report which states that a "'product liability action' means a civil action brought on any theory for harm caused by a product or product use," cannot be interpreted to mean use of alcohol, or use of a gun?

Mr. GORTON. The Senator is correct. First, the clarification is only included in the rented or leased products portion of the product seller provision. Thus, by way of example, in a situation where a car rental agency has exercised reasonable care with respect to maintaining and inspecting a vehicle, for example, the brakes, the engine, or the tires, and the person who shows up at the desk to rent the vehicle has an impeccable driving record, does not appear unfit to drive, and has a valid driver's license. The renter then takes the car and is subsequently involved in an accident. The product use language in section 103(c)(2) holds that the rental company cannot be held vicariously liable for the negligence of the renter simply because the company owns the product and has given permission for its use.

In contrast, if the rental agency rented a car to an obviously intoxicated person and that person was in a subsequent accident, then the rental agency would have been negligent in renting, or in negligently entrusting, the car to the person who was, at the time, obviously intoxicated. As spelled out clearly in the legislative history, "Such actions would continue to be governed by State law," and are not subject to H.R. 956.

Thus, even in the renter and lessor context, the distinction comes down to whether the seller was negligent as to the product, such as by failing to inspect the brakes, or negligent as to the person, such as by renting to a person with no driver's license and a notorious criminal record. H.R. 956 covers product liability actions; it does not cover negligent entrustment actions.

Mr. ROCKEFELLER. Thank you for that discussion. I hope it will help counter some of the misinformation that has been circulating regarding this provision. Is there any special provision of the bill that emphasizes what you have said here today?

Mr. GORTON. In fact, in order to address these very concerns you have thoughtfully raised, Senator, the product seller section specifically provides that the conference report does not cover negligent entrustment or negligence in selling, leasing or renting to an inappropriate party. Section 103(d) expressly states: "A civil action for negligent entrustment shall not be subject to the provisions of this Act, but shall be subject to any applicable State law." Frankly, I believe this provision is superfluous, and for this reason, it does not matter if, or where the provision appears in the conference report.

In sum, the product liability bill covers product liability, not negligent entrustment or failure to exercise reasonable care with regard to whom products are sold, rented or leased. H.R. 956 clearly would not cover "a seller of liquor in a bar who sold to a person who was intoxicated or a car rental agency that rents a car to a person who is obviously unfit to drive or a gun dealer that sells a firearm to a 'straw man' fronting for children or felons."

Mr. ABRAHAM. Mr. President, I rise today in support of H.R. 956, a bill to reform product liability law.

A few months ago, the 104th Congress took the first momentous step toward legal reform. Over President Clinton's veto, we passed H.R. 1056, a bill to reform securities litigation.

This legislation will significantly curb the epidemic of frivolous lawsuits that are diverting our Nation's resources away from productive activity and into transaction costs.

In passing H.R. 956, the Senate will be taking an equally important second step on the road toward a sane legal regime of civil justice.

Our current legal system, under which we spend $300 billion or 4.5 percent of our gross domestic product each year, is not just broken, it is falling apart.

This is a system in which plaintiffs receive less than half of every dollar spent on litigation-related costs. It is a system that forces necessary goods, such as pharmaceuticals that can treat a number of debilitating diseases and conditions, off the market in this country.

This is a system in which neighbors are turned into litigants. I was particularly struck by a recent example reported in the Washington Post. This case involved two 3-year-old children whose mothers could not settle a sandbox dispute—literally, a pre-school altercation in the sandbox—without going to court.

Something must be done about this situation and this litigious psychology, Mr. President, and this bill puts us on the road to real, substantive reform.

It institutes caps on punitive damages, thereby limiting potential windfalls for plaintiffs without in any way interfering with their ability to obtain full recovery for their injuries.

It provides product manufacturers with long-overdue relief from abusers of their products.

And it protects these makers, and sellers, from being made to pay for all or most noneconomic damages when they are responsible for only a small percentage.

First, as to punitive damages. No one wants to see plaintiffs denied full and fair compensation for their injuries. And this bill would do nothing to get in the way of such recoveries.

Unfortunately, punitive damages have come to be seen as part of the normal package of compensation to be expected by plaintiffs. George Priest of the Yale Law School reports that in one county, Bullock, AL, 95.6 percent of all cases filed in 1993–94 included claims for punitive damages.

Punitive damages are intended to punish and deter wrongdoing. When they become routine—one might say when they reach epidemic proportions—they end up hurting us all by increasing the cost of important goods and services.

For example, the American Tort Reform Association reports that, of the $18,000 cost of a heart pacemaker, $3,000 goes to cover lawsuits, as does $170 of the $1,000 cost of a motorized wheelchair and $500 of the cost of a 2-day maternity hospital stay.

We can no longer afford to allow this trend to continue. I am glad, therefore, that this bill begins to cap punitive damages—although in my judgment it only makes a beginning in that area.

I am particularly glad that the bill imposes a hard cap of $250,000 on punitive damages assessed against small businesses—the engine of growth and invention in our Nation.

Of course, punitive damage awards are not the only things increasing the costs of needed products.

Throughout the debate over civil justice reform I have been referring to the case of Piper Aircraft versus Cleveland. I use that example because it shows how ridiculous legal standards can literally kill an industry—as they did light aircraft manufacturing in America—and cost thousands of American jobs.

In Piper Aircraft, a man took the front seat out of his plane and intentionally attempted to fly it from the back seat. He crashed, not surprisingly, and his family sued and won over $1 million in damages on the grounds that he should have been able to fly safely from the back seat.

These are the kinds of decisions we must stop. Drunken plaintiffs, plaintiffs who abuse and misuse products—plaintiffs who blame manufacturers and sellers for their own misconduct—should not be rewarded with large sums of money. They may deserve our concern and sympathy, but we as a people do not deserve to pay for their misconduct through the loss of entire industries.

I am happy that this bill establishes defenses based on plaintiff inebriation and abuse of the product because I believe these defenses will benefit all Americans.

Finally, it seems clear to me that no manufacturer should be held liable for noneconomic damages which that individual or company did not cause.

In its common form, the doctrine of joint liability allows the plaintiff to collect the entire amount of a judgment from any defendant found partially responsible for the plaintiff's damages.

Thus, for example, a defendant found to be 1 percent responsible for the plaintiff's damages could be forced to pay 100 percent of the plaintiff's judgment.

This is unfair. And the unfairness is aggravated when noneconomic damages are awarded.

Noneconomic damages are intended to compensate plaintiffs for subjective harm, like pain and suffering, emotional distress, and humiliation.

Because noneconomic damages are not based on tangible losses, however, there are no objective criteria for calculating their amount. As a result, the size of these awards often depends more on the luck of the draw, in terms of the jury, than on the rule of law. Defendants can be forced to pay enormous sums for unverifiable damages they did not substantially cause.

This bill would reform joint liability in the product liability context by allowing it to be imposed for economic damages only, so that a defendant could be forced to pay for only his proportionate share of noneconomic damages.

As a result, plaintiffs would be fully compensated for their out-of-pocket losses, while defendants would be better able to predict and verify the amount of damages they would be forced to pay.

This reform thus would address the most pressing concerns of plaintiffs and defendants alike.

Mr. President, problems will remain with our civil justice system after this bill is made into law—if this bill is signed by President Clinton and made law.

Charities and their volunteers will remain unprotected from frivolous lawsuits.

Our municipalities will remain exposed to profit-seeking plaintiffs.

And the nonproducts area of private civil law in general will remain unreformed—3-year-olds and their mothers may still end up in court over a sandbox altercation.

In the last session I and some of my colleagues fought for more extensive, substantive, and programmatic reforms to our civil justice system. These were consistently turned back.

I believe at this point it is time for us to consider more neutral, procedural reforms, such as in the area of Federal conflicts rules, to rationalize a system we cannot seem to tame.

But I am certain, Mr. President, that this bill marks an important step toward a fairer, more reasonable and less expensive civil justice system.

This is why I am frustrated that President Clinton has threatened to veto this bill.

The President has stated repeatedly that he would support balanced, limited product liability reform. He has been singularly unhelpful in his opposition to more far-reaching reforms that would do more for American workers and consumers. But he has claimed that he would support product liability reform.

Now the President is claiming that this legislation is somehow "unfair to consumers."

Mr. President, is a system in which fifty-seven cents of every dollar awarded in court goes to lawyers and other transaction costs fair to consumers of legal services?

Is it really pro-consumer to have a system in which, as reported in a conference board survey, 47 percent of firms withdraw products from the marketplace, 25 percent discontinue some form of research, and 8 percent lay off employees, all out of fear of lawsuits?

Please tell me, Mr. President, are consumers helped by a system in which, according to a recent Gallup survey, one out of every five small businesses decides not to introduce a new product, or not to improve an existing one, out of fear of lawsuits?

The clear answer, I believe, is that consumers are hurt by our out-of-control civil justice system, a system which makes them pay more for less sophisticated and updated goods.

I respectfully suggest that President Clinton look beyond the interests of his friends among the trial lawyers to the interests of the American people as a whole.

If he looks to that interest he will find a nation hungry for reform, yearning to be freed from a civil justice system that is neither civil nor just, seeking protection from egregious wrongs, but not willing to sacrifice necessary goods, important public and voluntary services, and the very character of their communities to a system that no longer produces fair and predictable results.

If we in this chamber consult the interest of the people, Mr. President, we will pass this bill. If President Clinton consults that primary interest, he will sign the bill and make it law.

Mr. President, I yield the floor.

Ms. SNOWE. Mr. President, for those who were becoming skeptical, the conference report before us demonstrates that bipartisanship is still alive and well in the U.S. Congress.

First, I would like to express my appreciation to those who have contributed so greatly to the completion of this legislation—not only in the 104th Congress, but in some cases for more than a decade. The chairman of the Commerce Committee, Senator PRESSLER, has been instrumental in shepherding this legislation from the committee, to the Senate floor, into conference, and now back to the Senate floor. Also, Senator ROCKEFELLER and Senator GORTON—whose commitment and leadership on this issue have been unsurpassed in the Senate, and without whose efforts we would not be voting on this conference report today—were invaluable in crafting this legislation.

As I stated during the markup of S. 565 in the Senate Commerce Committee, and later during consideration of the bill on the floor of the Senate, I believe there is a compelling case for product liability reform in this country.

I firmly believe the legislation the Senate adopted early last year was a critical and long overdue first step to reforming an area of law that touches each and every one of us as consumers in America. Therefore, I am now eager to see a well-conceived and balanced bill accomplishing this goal enacted during the 104th Congress. It is a goal I think we can and should reach. I believe the conference report before us is well-conceived and balanced, and am particularly pleased that it contains the punitive damage cap I offered, and which was adopted, during consideration of the Senate bill.

In my statement on product liability on the floor of the Senate many months ago, I established my own personal checklist of critical issues I believed this legislation ought to address to make the bill fair, equitable, and effective. That is now also true for this conference report.

First, we must allow safe consumer products to be developed to meet consumer needs, and ensure that consumers can seek reasonable compensation when injuries and damages occur.

Second, the law must dissuade consumers from filing frivolous lawsuits, without discouraging Americans who have substantive complaints from filing legitimate suits.

Third, a uniform law must encourage companies to police the safety of their own products—both by providing incentives for excellence in safety and strong punishment when product safety is breached.

Last, and perhaps most importantly, one of our fundamental goals must be to ensure that this legislation protects the interests of the average American consumer who makes hefty use of products, but knows little of their innate safety or risk.

I believe that this conference report—like the Senate-passed bill—meets these criteria. One component of this conference report that I considered crucial to fulfilling these requirements is the cap on punitive damages.

To understand the issue of a punitive damage cap, I think it is valuable to remember what punitive damages are—and are not. I believe this issue is particularly important before today's vote because of recent reports in various news sources that have confused a cap on punitive damages with a cap on pain and suffering, or a cap on economic damages.

Punitive damages are punishment that serve an invaluable role in deterring quasi-criminal behavior by businesses. They have nothing to do with providing compensation to a person who has been harmed and are not intended in any way to make the plaintiff whole. That purpose is served by compensatory damages, which provide recovery for both economic damages—which include lost wages and medical expenses—and noneconomic damages, which include pain and suffering and other losses, such as those caused by the loss of one's sight, appendage, or reproductive organs.

One of the overriding problems in our current system is the absence of any consistent, meaningful standards for determining whether punitive damages should be awarded and—if so—in what amounts. The absence of consistent standards not only leads to widely disparate and runaway punitive awards, but it also affects the settlement process. Individuals and companies that are sued often face a catch-22: pay high legal fees to fight a case through trial, verdict, and appeal—or simply settle out of court for any amount less than these anticipated legal fees.

Even for the defendant who recognizes the cost of proving innocence to be too great, or simply hopes to avoid the lottery nature of a possible punitive award—seeking a settlement carries a hidden cost. The lack of a uniform national standard—or simply the existence of vague State standards—forces the defendant to include a punitive premium in their settlements, even when the likelihood of a punitive award is small or even nonexistent. In addition, the high reversal rate of punitive damage awards underscores the absence of clear and understandable rules.

Therefore, in establishing a cap, I considered it vital that the measure we chose be fair, uniform, act as adequate punishment, and serve as an adequate deterrent. I believe a cap based on compensatory damages accomplishes all of these objectives, which is why I fought to include such a measure in the Senate bill. This measure is fair because it is blind to the socioeconomic position of the plaintiff. In addition, because a punitive cap that includes noneconomic damages in its formula is inherently unpredictable, one cannot argue that a business with quasi-criminal intents will be able to predict the ultimate cost of all possible punitive claims and make a financial decision to produce a dangerous product.

At the same time, I do not believe that a cap based on a measure of economic damages alone would accomplish all of these objectives in all circumstances. Although such a measure might serve as adequate punishment and act as an adequate deterrent in many cases, it relies too greatly on the economic position of the plaintiff in establishing a sufficient level of punishment.

While the Senate bill also included an additur provision that allowed the judge to impose a higher punitive damage award in particularly egregious circumstances—and this conference report also includes a modified additur provision—I believe the measure based on compensatory damages will work for everyone and will subject egregious offenders to strong punishment. This standard is fair and nondiscriminatory. It will apply to all litigants equally—whether you are a man or woman, wealthy or poor, a child or an adult. Therefore, I am particularly pleased that the conference report before us maintains the Snowe amendment on punitive damages. And while I believe that the additur will be proven to be unnecessary due to the inherently even-handed and unpredictable nature

of total compensatory damages, I accept its inclusion in the conference report as a means of providing the opportunity for additional punishment in cases where a judge—staying within the parameters set by the jury—deems it necessary.

Mr. President, the bill before us—as outlined by Senators GORTON and ROCKEFELLER—is a targeted bill that brings common sense and reform to one class of lawsuits: those pertaining to product liability. I believe this legislation is sound and will benefit consumers and businesses. As a result, I share the disappointment of other Members of this body in President Clinton's statement that he would veto this bipartisan legislation. At the least, I found it surprising that President Clinton opposes legislation that he endorsed as a member of the National Governors' Association when he was Governor Clinton. I remain hopeful that President Clinton will reconsider his opposition in the coming days. I think a strong bipartisan vote in favor of this legislation is just what the President needs in order to see the light on this issue.

Mr. President, we must be able to show the American people that we not only considered this essential and historic legislation, but that we passed it with strong bipartisan support as well. There is simply no question that, if enacted, this reform will have a positive and wide-ranging impact on millions of Americans. Thank you, Mr. President, I yield the floor.

Mr. COHEN. Mr. President, I continue to oppose the product liability reform bill for two main reasons: it unnecessarily intrudes upon the prerogatives of our State governments and the purported problem the bill attempts to address—the impact of punitive damages—is overstated.

For over two centuries, tort law has been developed by our common law courts and State legislatures. The same is true for our contract law, real property law, insurance law, and a host of other subjects. The core principles of tort law are the same across the country, but each State has adjusted its laws to suit its individual needs, experimented with liability reforms, and attempted to strike a careful balance the interests of business and consumers.

The Federal product liability bill would put an end to this era of local experimentation and adjustment. Instead, it would contribute to the trend of the last half century of centralizing power in Washington. Unfortunately, the product liability bill will be only the first step in this process. Once it is completed other interests will follow with pleas for Federal intervention. And eventually the States will be stripped of yet another area of authority. This trend runs entirely counter to the generally accepted principle that the Federal Government is too big and that more authority should be returned to the States and localities.

Ironically, we are taking this step at a time when the States are vigorously engaged in the topic of tort reform. Just this year, New Jersey, Indiana, Wisconsin, Illinois, and Texas have passed tort reform legislation. In fact, since 1986, 31 States have altered their product liability laws, 30 States limit the amount of punitive damages in some manner and 41 States have changed or abolished the rule of joint and several liability. With this much activity on the state level, there is no justification for this sweeping, intrusive Federal bill.

I also believe that the case for tort reform has been exaggerated. Unfortunately, the debate over this legislation has been driven more by anecdote and horror stories than objective facts. Indeed, the dearth of solid, unbiased research led the Wall Street Journal to conclude last year that "Truth Is the First Casualty of the Tort-Reform Debate."

A review of some data collected by the Bureau of Justice Statistics, a neutral arbiter on this topic, demonstrates that runaway jury verdicts are not as great of a problem as the tort reform advocates suggest. The study showed that courts in the 75 largest counties in the country decided 762,000 civil cases in 1992. Punitive damages were awarded in only 364 of these cases—.04 percent. Only 360 of the 762,000 cases involved product liability. Punitive damages were awarded in only three of those cases. And the total amount of punitive damages awarded was only $40,000.

The study also suggests that if we are looking to solve problems with the application of punitive damages, perhaps we should be addressing other areas of the law. Of the cases in which the plaintiff won a jury verdict, punitive damages were awarded in 30 percent of all slander cases, 21 percent of all fraud cases, but only 2 percent of all product liability cases.

I do not deny that there have been abusive cases where excessive awards have been made for minor injuries. But to address this problem, we need to do more to punish attorneys who bring frivolous cases or use the force of the legal system to coerce companies to settle meritless claims. We also need to encourage judges to intervene when juries run amok. Instead of taking these steps, this bill places caps on damages and limits the ability of injured parties to collect judgments imposed against wrongdoers. In essence, it limits the ability of those with meritorious claims to gain full compensation in order to rid the system of shameful cases that should have never been filed in the first place.

In my view, this is an unwise approach that will do damage to our principle of federalism. I will vote against this conference report.

Mrs. MURRAY. Mr. President, I would like to explain why I voted against this product liability conference report.

All of us in this room have heard horrific stories about people who got hurt when they did stupid or silly things with a product and then recovered tremendous amounts of money from innocent businesses. Those few stories have gotten a lot of mileage. They have gotten us to a conference report that takes power from consumers and gives it to corporations.

Mr. President, I am a mother who wants to be responsible for passing laws that improve the chances for my children to live healthy, safe lives. I am glad that victims have used the current State-based product liability laws to force manufacturers to make safe toys, nonflammable pajamas, and cars and trucks that don't explode. The current legal system forced companies to be responsible or face the possibility of significant financial loss.

I also want to be responsible for passing laws that provide the hard working men and women of this country an opportunity to be fully compensated for injuries that are a direct result of products they use in the workplace. This conference report makes it much harder for our workers to recover damages from those responsible for their injuries. It is designed to give advantage to corporations and disadvantage to our workers through its limits on joint liability for noneconomic damages, on punitive damages, and on seller liability, as well as its broadly drawn defenses to liability, such as the statute of repose.

In addition, I want to support legislation that allows our citizens to trust that the medical devices they are receiving are safe. So many women needlessly suffered when the maker of silicone gel breast implants refused to heed initial warning signs that their product was flawed. Today, there is no dispute that there is a strong correlation between silicone breast implants and serious health disorders, including joint and muscle pain, tremors, and autoimmune diseases. And, unfortunately, not all of the victims of these implants are known. For those who have not yet filed, this bill will block them from seeking redress from this grossly negligent company. That is wrong.

Finally, I want to be responsible for legislation that improves our citizens' quality of life. This bill could severely limit lawsuits involving products that damage the environment, such as pesticides and toxic chemicals. In particular, the provision addressing joint and several liability could make it nearly impossible for victims to receive full and fair compensation for harm caused by a mixture of toxic substances where

a victim is unable to prove the percentage of damage caused by each chemical. Especially now, when we see efforts to scale back Government's role in environmental protection, the civil justice system is an even more important mechanism for deterring environmental degradation.

I know that responsible businesses feel threatened by the current system. I believe we should seek to reform and improve our system. But this approach is too sweeping. We need to take smaller steps and make more incremental reforms.

Mr. President, I have voted against this conference report for all of the above reasons. I cannot support a products liability law that shifts power from the States to the Federal Government and takes power away from our children, the elderly and working people and gives it to the companies that produce harmful products.

Mr. DOMENICI. Mr. President, today I am pleased to support the conference agreement on product liability litigation reform—reached after tremendous efforts by my colleagues in both the House and Senate. 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 thoughtful, bi-partisan approach to solving the problems associated with products liability lawsuits. This is a bill that President Clinton should sign.

I also must commend the House conferees, particularly the distinguished chairman of the House Judiciary Committee, Mr. Hyde, for their willingness to reach a compromise on some of the more controversial provisions in their bill, in order that we could successfully pass a conference report that still will have a positive impact on our products liability litigation system. There are some, and I am among them, who would have liked to see a conference report which went even further on some issues than the agreement we have before us. However, I realize that we would have had a difficult time passing a more expansive and comprehensive legal reform bill. Clearly some reform is better than no reform at all. Our legal system needs it.

I have watched the products liability reform debate over the past several months with great interest. There was a time when many believed that this type of legal reform would not be possible. No one, least of all me, underestimates the power of the trial lawyers to derail even the most reasonable lawsuit reform efforts. Senator DODD and I fought for years to fix our Nation's securities class-action system, and late last year the Congress overrode President Clinton's veto of the bill and enacted comprehensive securities litigation reform. I hope that the President will examine this bill closely, because if he does, the only conclusion he should reach is that this is a reasonable, commonsense approach to reform that is good for the country.

There can be no doubt that our current products liability system 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. I have heard many tell me 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 under compensated. Meanwhile, businesses which create jobs and prosperity in America 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 generating a products liability lawsuit. 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 has written:

> 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 un-pragmatic 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, but will not sell it in the United States out of fear of also being sued. These are products which could save lives and improve the quality of living for all Americans.

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 or 5 years to receive compensation. This leads some victims to settle more quickly in order to receive relief within a reasonable time. Companies often 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.

I believe that the most important reform in this conference report is the way it treats 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 do not do much, except line the pockets of lawyers. They serve relatively little deterrent purpose and led former Supreme Court Justice Lewis Powell to describe them as inviting "punishment so arbitrary as to be virtually random." Justice Powell wisely has commented that because juries can impose virtually limitless punitive damages, 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.

The Washington Post also agrees that punitive damages reform is necessary. An editorial in support of the conference report printed last week notes that "there are no ground rules for judges and juries in this area" and that "the whole thing is like a lottery, which is terribly unfair." The editorial concludes that "the compromise should be accepted by both houses and signed by the President."

Reform of punitive damages will return some common sense to the system. Huge punitive damage awards threaten to wipe out small businesses and charitable organizations and I applaud the conferees for providing special protection for these important entities, which are particularly vulnerable to legal extortion by trial lawyers.

By capping the amount of punitive damages available in product liability cases and raising the legal threshold for an award of punitive damages, the conference report 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 however reasonably allows judges some flexibility to go above the cap in truly egregious cases, where increased punitive damages might be warranted.

The conferees also have taken the wise step to reform joint liability, without limiting the ability of plaintiffs to recover their economic damages. The new law will abolish 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.

The compromise 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 the new law will provide 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 were cosponsors of the securities reform bill Senator DODD and I authored earlier this Congress. Our tort system is badly in need of reform, and the conference report on products liability before us is a step in the right direction. I support it, and I hope that my colleagues and the President will as well.

Ms. MOSELEY-BRAUN. Mr. President, I voted for S. 565, the Senate product liability bill, when it was before the Senate last May, and I support this conference report, which is, in virtually all of its essential provisions, identical to that bill. I supported the bill last year, and I continue to support it now, because I believe that Federal product liability reform makes sense for Americans, and because it makes sense for America.

Let's be clear what product liability reform is and is not about. It is not about an explosion of litigation that our courts physically cannot handle. It is about the chilling effect that product liability judicial decisions in one State can have on businesses across the Nation.

It is not about making it more difficult for Americans injured by products to get justice from those who injured them. It is about reducing the number of frivolous suits and unnecessary legal costs.

It is not about tilting the playing field in favor of business and against consumers or employees. It is about taking a step toward making the playing field more level for consumers, employees and businesses all across this Nation.

And it is not about taking powers away from States in order to disadvantage ordinary Americans. Rather, it is a narrow, carefully crafted approach to reform based on the realities of commerce today.

The basic fact that underlies this bill is that commerce is not local, but national and international. Over 70 percent of what is manufactured in Illinois is sold elsewhere, and Illinois is not unique in that regard. Because commerce is national, and indeed, increasingly international, the laws of any one State are simply not effective in establishing product liability standards for manufacturers in that State. Our Nation's Governors have recognized that fact, which is why the National Governor's Association has three times unanimously approved resolutions supporting Federal product liability reform.

Article I, section 8 of the Constitution grants Congress the power to regulate interstate commerce. Given the interstate and international nature of commerce, and the importance of having a healthy climate for manufacturing here in the United States, reform is essential, both so we can compete successfully in an ever-more competitive world marketplace and so we can generate the kind of economic growth needed to offer every American the opportunity to achieve the American Dream.

Achieving that dream depends on being able to find a good job at good wages, jobs that make it possible for American families to purchase their own homes and to send their children to college, and that suggests a healthy climate for manufacturing—which tends to produce the kinds of jobs Americans want and need—is in our national interest.

The current fragmented product liability system offers less certainty than a casino. That lack of certainty means that the current product liability system imposes costs far greater than the amounts awarded to successful plaintiffs, or the costs involved in defending and pursuing product liability cases. It adds costs to products, even when a company has never been sued, and unnecessary higher costs hurt consumers, and hurt job creation. And, while it is impossible to quantify, there is no doubt that the current product liability system causes some companies not to produce some products. That, too, means fewer good paying manufacturing jobs.

I do not suggest that Americans who might be injured by products should sacrifice their rights to redress for their injuries in order to help our economy generate new, good paying jobs—and this bill does not ask that of any American. But we must all remember that Americans aren't just consumers; they don't have just one interest at stake. Instead of dividing Americans from one another, therefore, we should be working together for the kind of reform that is in all of our interests.

By creating greater certainty, by reducing unnecessary cost, and by addressing the inadvertent chilling effect the current system has on new product creation, product liability reform will help generate new economic growth, and new jobs. And reform will add to the competitiveness of U.S. manufacturing, something that is essential in this ever more competitive world economy.

Some continue to argue that we should leave this issue to the States to address. However, the fact is that, given today's economic realities—and tomorrow's—product liability, no less than health care and other components of our social safety net, is a legitimate and necessary subject for Federal action. And the fact is is that the right kind of product liability reform, like the right kind of health care reform, and the right kind of welfare reform, and expand opportunity, and help create a brighter future for Americans individually and for our Nation collectively.

While this bill is not perfect, I think that, in general, it is the right kind of reform. It will bring greater uniformity to product liability law. It will help cut out the unnecessary costs the current product liability system imposes on businesses, consumers, and employees. And it tries very hard to appropriately balance the competing concerns involved.

I know that some Americans do not share the view that Federal product liability reform is needed, and that there are a number of concerns regarding specific provisions of the bill. I think it is worth noting, however, that the conference report now before us is, with very modest changes, the bill this Senate sent to conference. I ask unanimous consent, Mr. President, that a table comparing the original Senate bill and the conference report be printed in the RECORD at the conclusion of my remarks.

I know the statute of repose has generated some controversy. I would simply point out three things. First, the 15-year statute of repose applies to workplace goods only.

Second, no State with a statute of repose provides a more liberal time period than the one in the conference report; and

Third, the bill permits plaintiffs in every State to file a complaint after

she or he discovers or should have discovered both the harm and its cause, a provision that is particularly important to plaintiffs who have trouble identifying the cause of the injury they suffered. For example, a person who developed a cancer many years after exposure to a chemical would be able to file suit anytime up to 2 years after the link between the chemical, and the harm he or she suffered, was identified.

The punitive damages provision has also been controversial. However, this provision is virtually identical to the bill as it passed the Senate last year. And it is more proconsumer than the laws in about half of the States.

Moreover, the bill does not put a hard cap on punitive damages. For cases involving all but the smallest of businesses, it allows punitive damages to be imposed up to the greater of $250,000 or twice the plaintiff's economic and noneconomic damages, including pain and suffering, and allows the judge in the case to increase the award by up to double those limits—in other words, to go up to four times the plaintiff's economic and noneconomic damages—if necessary "to punish the egregious conduct of the defendant." This approach was modeled on a recommendation made by the American College of Trial Lawyers, and it will permit huge punitive damages awards in cases where such awards are justified by the nature of the conduct and the severity of the harm involved, even when the harm is mostly noneconomic in nature.

As to the concerns regarding joint and several liability, I think it is worth pointing out that the conference report, like the original Senate-passed bill, only eliminates joint and several liability for noneconomic damages. This formulation is already the law in California, and it provides reasonable protection both for plaintiffs and for businesses who have only a minor involvement in the harm suffered by the plaintiff, but who can be held responsible for the entire amount of damages if the other defendants in the case are not able to pay their share of the amount awarded.

It is also worth noting that the conference report does not contain the broad, unjustified preemption of State civil justice systems that was in the House-passed bill, provisions that could of undermined the civil rights of Americans, and which would have almost casually overturned our whole State justice system. And it does not contain the medical malpractice provisions that were in the House bill, provisions that did not and do not belong in a product liability bill.

Moreover, the conference report does not contain the so-called FDA excuse that I strongly opposed in the last Congress. The bill that emerged from conference is the kind of narrow, carefully tailored approach that was needed, and the only approach that I could possibly support.

Mr. President, I said in 1994 that the problems present in our product liability system are problems that this body must address. Last year, when the product liability bill was before the Senate, I reiterated my view that reform is necessary, and I supported S. 565 as a reasonable approach to achieving that necessary reform. The conference report before now before us does not contain the provisions from the House bill that I believe have no place in this legislation. And, as I said at the outset of my remarks, it is close to identical to the bill I voted for last May. I therefore voted for cloture yesterday, and will vote in favor of sending this conference report to the President. I hope he will reconsider his position, and sign it, because enacting this bill into law is in the interest of every American.

Mr. President, I want to conclude by congratulating Senators GORTON and ROCKEFELLER for their leadership in bringing the bill to this point. I particularly want to thank my colleague from West Virginia. He went to great lengths to consult with me, and with other Senators, and to make all of us part of that conference, even though we technically were not among the conferees. I greatly appreciate his commitment to the kind of balanced, narrowly crafted reform that is so greatly needed and so long overdue. I am pleased to have this opportunity to vote with him, and with the other supporters on a set of reforms that are based on common sense, and that make sense for America.

Mr. KERRY. Mr. President, our laws play an important role in fostering a competitive economic environment by establishing ground rules for fair competition and by helping to reduce the costs of doing business. But our laws play an even more critical role in protecting the rights of individuals, workers, and consumers. Congress, therefore, has a special responsibility to ensure that the laws we write are reasonable and fair.

The conference report on H.R. 956, the so-called Common Sense Product Liability Reform Act of 1996, fails the "reasonable and fair" test.

The conference report, if enacted, will take away the rights U.S. citizens enjoy today in seeking redress for harm caused by unsafe products while giving manufacturers no incentive to produce safer products. This conference report is not fair to the working men and women of this country. It is biased against low-income individuals, women, and the elderly and it is plain dangerous for consumers. The products liability conference report will overturn the laws of every State and, I fear, will do great harm.

Consider that every year thousands of workers are injured or killed as a direct result of defects in products they use in the workplace. For many of them, the tort system is the only recourse for full redress of their injuries. Yet, this conference report will make it harder for workers to hold fully accountable those who cause the injury. The limits on joint liability for noneconomic damages, on punitive damages, on seller liability and the greatly expanded coverage under the statute of repose are all one-sided. Together, these provisions clearly favor wealthy corporations at the expense of working Americans.

The 15-year statute of repose would affect more than one-half of the products claims filed against machine tool manufacturers. Under the conference report, workers injured by defective machinery 15 years after first delivery would be prohibited from seeking to prove in court that even a grossly negligent manufacturer was responsible for their injury. On the other hand, the right of the business to pursue an action against the same manufacturer for commercial loss would be fully preserved.

The conference report would cap punitive damages at $250,000 or two times compensatory damages, whichever is greater, except in cases involving small businesses with fewer than 25 employees, where punitives would be capped at $250,000 or two times compensatories, whichever is the lesser amount. Such limits clearly undermine the deterrent value of punitive damages.

The threat of punitive damages has in part contributed to the recall, discontinuance, or change in the use of many dangerous and defective products, including the Ford Pinto, asbestos, the Dalkon shield, the Suzuki Samurai, heart valves, and silicone breast implants. Punitive damages have also helped make products safer: the redesign of the Jeep CJ-5; adding guards to chainsaws; the replacement of lap-belts with rear-seat three-point safety belts in passenger cars; the use of roll bars on farm tractors; warnings on toxic household chemicals; the use of flame-retardant fabric in children's sleepwear; and the list goes on and on. The conference report will defang the threat inherent in punitive damages.

But perhaps the most disturbing aspect of this legislation is that Ford Motor calculated that it was cheaper under the current tort system to settle rather than to try to protect the lives of every Pinto owner with a recall. The manufacturers of silicone breast implants calculated it was cheaper under the current tort system to continue selling implants that their own sales force reported had leakage problems rather than to alert the more than 1 million women in this country with implants about the danger of the products. Playtex calculated it was cheaper to continue to market its super-absorbent tampon than to try to warn women

about the deadly effects of toxic shock syndrome. If Ford Motor, Dow, Playtex, and other major manufacturers failed to take corrective action to make their products safer under the present tort system, there is no reason to expect this conference report will encourage them to act more responsibly.

Would anyone settle for $250,000 in exchange for losing a loved one to death by a product that the manufacturer knew was unsafe? If this conference report becomes law, no one would be able to get even $250,000 because there is not a lawyer in this country who would take the case. No law firm could afford to go up against companies like Ford Motor or Dow or others with their host of attorneys and huge legal budgets 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.

Proponents of this legislation stress that the current tort system is biased against them: they point 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 claim there is an "explosion" in products liability litigation, with uncontrollable punitive damages awards; and they argue that the present system of "lottery" liability, where liability differs from state to state, does not enhance the safety of U.S. products. The proponents are wrong on each of these points.

Over the past decade, products liability insurance cost 26 cents per $100 of retail product sales, or about $26 on the price of a $10,000 automobile. Two recent reports by the National Association of Insurance Commissioners confirm there is no "crisis" in the cost of product liability insurance. In fact, the Association reported in January 1995 that earned premiums for product liability have steadily dropped from more than $2.1 billion in 1989 to $1.6 billion in 1994—a drop of 26 percent. The Association pointed to shifts to self-insurance and competition in the industry as reasons for the decline, but did not mention tort reform as a factor. Moreover, the Association reported in October 1995 that the premium volume for product liability insurance premiums has remained virtually flat from 1986 through 1994.

The so-called explosion in products cases is another myth. While consumer products are responsible for some 39,000 deaths and 30 million injuries each year, a 1993 study by Boston's Suffolk University Law School and Northeastern University found there were only 355 awards in products suits from 1965 through 1990, and that half of these were overturned or reduced. Indeed, the National Center for State Courts reported that product liability cases accounted for .0036 percent of the total civil case load in 1992, and the Legal Times reported that products claims in Federal courts declined by 36 percent from 1985 to 1991. In my own State of Massachusetts, there were absolutely no punitive damages awarded in products cases; punitive damages are only permitted in wrongful death cases.

The conference report on H.R. 956 will not resolve the problem of 51 different products liability laws in the United States. On the contrary, it will only serve to further complicate the tort system and tilt it strongly in favor of manufacturers and against consumers. The conference report contains only one-way preemption.

The conference report places caps on punitive damages in products cases, yet allows the laws to stand in the 39 States where those laws prohibit punitive damage awards or where they place more restrictions on victims' rights. On the other hand, the conference report does not require that these States award punitive damages.

The conference report preempts State law on misuse or alteration of a product only to the extent State law is inconsistent with the conference report, meaning that the 37 States that provide a complete defense to liability in some cases of product misuse or alteration would not be preempted.

The conference report prohibits lawsuits involving durable goods that are more than 15 years old, but specifically preserves State laws with shorter limitations.

The Products Liability Fairness Act, S. 565, will overturn the laws of every State that enable people who have been harmed by unsafe or faulty products from obtaining full and fair recovery. It will prevent citizens from holding wrongdoers accountable. It will preempt legitimate claims that deserve to be heard. It will strip citizens of their rights and it should be rejected.

I cannot support legislation that would have placed limits on punitive damages for the family of the 5-year-old boy in New Bedford, MA, who died in a house fire after igniting a couch with matches. I cannot support legislation that would have limited damages for the family of the 8-month-old boy 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 that had been placed within 6 inches of his crib to keep him warm.

I surely cannot support legislation that would have limited the liability of the big corporations in Woburn, MA, whose highly toxic pollutants killed and injured children. The Woburn case, in which eight working class families sued two of our Nation's biggest corporations because they suspected the companies had polluted the water supply with highly toxic industrial solvents, took 9 years. The young 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 cleanup the polluted aquifer. The attorney has said that if this bill were law today, he would never have considered the case.

Mr. President, the conference report on H.R. 956 will take away the right every American enjoys today through the jury box to force accountability for dangerous, careless or reckless behavior. In the jury box, every American can bring about positive change. If we take away this fundamental right, we will have compromised our Nation's core values.

The conference report promotes the interests of business at the expense of the rights of consumers. It will create a nightmarish new legal thicket that should be avoided rather than embraced. 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, it is not reasonable and it should be rejected.

Mr. GLENN. Mr. President, I rise in support of this legislation and want to commend the efforts of Senators ROCKEFELLER and GORTON on their work. This legislation has been needed for a long time and I am pleased that we will be taking this positive step forward today.

I have been concerned for years about our current product liability system and I believe that meaningful reform is long overdue. I believe that this bill will benefit both consumers and businesses. Under our current system, manufacturers of products are subject to a patchwork of varying State laws which contribute to unpredictable outcomes. In some cases plaintiffs receive less than they deserve and in others, plaintiffs receive too much. Because of the unpredictability, cases that are substantially similar receive very different results.

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.

I believe this legislation will improve the competitiveness of our industries which means jobs. I also believe that the biomaterials provisions will help insure that much needed medical devices will remain available to many Americans. Because of liability concerns many products are becoming unavailable. Examples include materials

used in heart valves, artificial blood vessels, and other medical implants. In Cincinnati, OH, Fusite, a part of Emerson Electric Co., has been in business since 1943. They supply glass-to-metal sealed hermetic terminals. One terminal body is used by the makers of implantable batteries in heart pacemakers. In 1995, because of the liability concerns, Fusite determined it would no longer supply this product.

The current system is unfair to consumers. Much too much money is spent on litigation rather than compensation and the high cost of product liability insurance means higher costs for consumers.

Without doubt an injured party deserves fair compensation, however the cost of litigation is substantial. More and more is spent on legal fees and less is spent on 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 of product liability makes our companies less competitive in world markets than foreign companies.

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 fifteen years is established. 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. Although I am concerned about the establishment of caps on punitive damages, I believe that the judge additur provision included in the bill will allow for appropriate punitive damages in egregious cases.

Mr. President, not every provision in this legislation is written the way I would have preferred, but I believe that it is significant reform and urge its passage.

Mr. GORTON. Mr. President, I would like to clarify an issue I discussed in a lengthy, and frankly, rather confusing colloquy with my colleague from North Dakota, Mr. DORGAN.

Mr. DORGAN sought clarification of a provision on the Product Liability Conference Report dealing with the way in which this legislation will apply to utilities. Although I had characterized a change made in conference as technical, he asserted that the change was substantive.

The intent of the bill is to cover all products. This intent is expressed in the comprehensive definition of a product found in section 101(14) of the conference report, which defines products to include "any object, substance, mixture, or raw material in a gaseous, liquid, or solid state * * *." This definition clearly encompasses electricity, water delivered by a utility, natural gas, and steam. To simplify this discussion I will refer only to electricity.

Another goal of the legislation, however, is to leave in place state determinations of when electricity is a product. Most States treat the transmission of electricity as a service. For this reason, the Senate bill excluded electricity from the definition of product. This exclusion, however, overlooked the fact that once electricity has passed through a customer's meter, many States consider it to be a product, and subject it to a strict liability standard.

Because of this oversight, the Senate provision created an unintended conflict between the two goals of this bill: First to cover all products, and second, to leave undisturbed the state determination of whether or not electricity is a product. The desire to meet both these goals is reflected on page 24, footnote 86, of the Committee on Commerce, Science, and Transportation Report on the Senate bill. But to repeat, the language of the Senate did not do what it needed; it exempted electricity, whether or not it was treated as a product by state law and whether or not it was subject to a rule of strict liability.

In conference, the statutory language was made explicitly consistent with those dual intentions. That is to say, the bill should respect state choice as to whether or not a utility is a product, but the bill should apply evenly to all products. Consequently, language was added to the conference report saying that electricity was excluded from the definition of product, unless it was subject under State law to strict liability, that is to say, is treated as a product.

Senator DORGAN is correct that the conference report does change the substance of this provision. I think it does so wisely and in order to make the legislation clearly express our intent.

Mr. SPECTER. Mr. President, after extensive deliberation, on a very close call, I have decided to vote against the conference report on product liability legislation.

This is a close question for me because the conference report corrects my concern on punitive damages and there is a need to make American business more competitive in world markets to provide economic expansion and job opportunities.

In the final analysis, my judgment is that the disadvantages of the bill outweigh the advantages. For example, the 15-year statute of repose would deny recovery to injured parties from products intended for and used long after 15 years.

The changes in the law involving workmen's compensation make it more difficult for plaintiffs to recover where a coworker or the employer is at fault. That provision also limits the employer's traditional subrogation rights leading to the opposition of homebuilders, workmen's compensation insurance carriers and other business interests because workmen's compensation costs will escalate.

The conference report further limits the manufacturers' liability in cases where injuries result from a defective product where alcohol has been used. A defective seat belt is supposed to protect the car's driver regardless of his/her condition.

This vote against the conference report is consistent with my vote yesterday for cloture. As I said in my statement on yesterday's vote, I believe the Senate's final determination on product liability legislation should be decided by majority vote rather than the super majority of 60 required for cloture.

A decision on whether to support cloture depends upon a variety of factors such as whether there should be more debate to fully air the issue or whether a constitutional issue or some other fundamental issue is involved which warrants a super majority of 60.

On this bill on the merits, I believe it should be decided by the traditional majority vote because it is such a close question without an underlying constitutional issue or some other fundamental matter. On the merits of the bill, in my judgment the disadvantages outweigh the advantages.

Mr. GRAMS. Mr. President, today is a day of victory and celebration for America's manufacturers, consumers, and taxpayers. Congress has finally succeeded in taking the first important step in overhauling our Nation's badly broken product liability system.

Mr. President, I would like to commend my colleagues, Senators GORTON and ROCKEFELLER for their endless hours of hard work and commitment to enacting long-needed product liability reforms. This truly is a significant accomplishment.

Unfortunately, the President has already issued his press release stating that he will stop this important bill—dead in its tracks—with his veto pen. Despite bipartisan support, he claims this bill fails to "fairly balance the interests of consumers with those of manufacturers and sellers." Mr. President, I disagree.

This bill is a good compromise; it's fair; and it does protect sellers, manufacturers and most importantly, consumers.

Mr. President, too many people today are filing lawsuits in the hopes that they will hit the jackpot even if there is little merit to their case. The lawyers get wealthy, but under our current

system, that wealth comes at the expense of America's consumers.

Our society has become so accustomed to suing that a recent study showed that 90 percent of all U.S. companies can expect to be named in a product liability lawsuit. Furthermore, 89 percent of Americans believe that "too many lawsuits are being filed in America today."

Mr. President, the price tag of lawsuits is astronomical. In fact, some experts have estimated that the total cost of all lawsuits filed in America exceeds $300 billion each year. And according to the Product Liability Coordinating Committee, the cost of product liability lawsuits, alone, ranges anywhere from $80 to $120 billion annually.

American consumers ultimately pay the price of frivolous lawsuits which are paralyzing our country's economic growth and ability to create new jobs. Instead, prices increase and jobs are eliminated when businesses close, downsize or decline new product introduction for fear of a frivolous lawsuit.

As a former small businessman, I understand how devastating the threat of a potential lawsuit can be on any company. Our laws have created a hostile business climate that has compromised the competitive position of many companies, forcing them to reduce salaries or lay off employees to avoid going out of business.

Companies who are sued have two choices: endure a lengthy and costly trial in the hopes of proving their innocence or settle out of court to save trial costs. Small businesses don't have the time or resources to spend countless days in a courtroom when they are struggling to make payroll and meet customer needs.

Everyone agrees that an injured person should have a day in court, and this legislation will not prevent legal recourse for justifiable claims. However, it will put an end to the fishing expeditions that trial attorneys use to extract huge, unwarranted settlements from businesses fearful of protracted litigation costs.

Businesses, taxpayers, and consumers can no longer bear this burden, making passage of this legislation critical. Americans understand that our current system is a litigation lottery which increases the costs consumers pay when they purchase a product. It even forces companies to lay-off employees.

Far too often, the cost of meeting these outrageous judgments eats up resources that could have gone toward new jobs and better salaries. The President and the trial lawyers are kidding themselves if they believe these costs are not passed on to you and me as consumers. Appropriately, this is called the tort tax.

Mr. President, most of my colleagues know that I am a strong opponent of tax increases of any kind. I believe the Product Liability Conference Report will lessen the tort tax on America's consumers.

This legislation addresses many of the problems in our current system. It limits manufacturer liability when a product is misused or altered by the user; it caps punitive damages to twice the compensatory damages or $250,000, whichever is greater; it allows judges the flexibility to impose higher damages in extreme cases; and, it eliminates joint and several liability for certain damages, such as pain and suffering, so defendants pay only for the damages they cause—not those caused by others.

In addition to the overall benefits consumers will enjoy after enactment of this bill, Minnesota will see an additional benefit. The reality is our current system is stifling technological innovation, in particular, the production of medical devices.

Mr. President, Minnesota is a world leader in the development of lifesaving medical technology and this industry is a vital part of Minnesota's growing economy.

In 1994, there were 568 registered medical device establishments in Minnesota. Furthermore, Minnesota ranks 2nd in the Nation with over 16,000 people employed in medical device manufacturing.

More than 11 million Americans rely on implanted medical technologies to sustain or enhance the quality of their lives. Many of these products are manufactured in my State including artificial joints, cardiac defibrillators, drug infusion pumps and heart valves.

Unfortunately, many suppliers of the raw materials used to make medical devices are restricting the use of their products in medical implants for fear of exposing themselves to costly product liability litigation.

Suppliers of raw materials play no role in the design or manufacture of the medical device and courts have consistently found them free from liability. Unfortunately, the costs of the lawsuit "discovery" process are surpassing the profits raw material suppliers will receive from selling their products to device manufacturers.

If biomaterials suppliers refuse to sell their raw materials to America's medical device companies, device manufacturers are forced to either substitute another material, which many times is impossible, or discontinue production of a device which is fulfilling a vital need for patients.

A recent example was highlighted in the Wall Street Journal by a mother whose daughter suffers from hydrocephalus, or water on the brain. The only medical therapy that treats this is a surgically implanted device, called a shunt, made of silicone.

Fifty-thousand Americans depend on shunts to keep them alive, but because of recent lawsuits, companies who supply silicone for the production of devices like shunts are no longer willing to sell the raw materials. This situation is devastating to patients who desperately need these lifesaving devices.

Essentially, this legislation's Biomaterials Access Assurance provision would allow suppliers of the raw materials or biomaterials used to make medical devices, to obtain dismissal, without extensive discovery or other legal costs, in certain tort suits in which plaintiffs allege harm from a finished medical device.

This provision would allow raw materials suppliers to be dismissed from lawsuits if the generic raw material used in the medical device met contract specifications, and if the biomaterials supplier cannot be classified as either a manufacturer or seller of the medical device. Most importantly, this provision would not affect the ability of plaintiffs to sue manufacturers or sellers of medical devices.

As the chairman of the Senate's Medical Technology Caucus, I would like to thank the Senator from Connecticut for all his hard work to ensure that the Product Liability bill recognizes the urgency of providing much-needed relief to suppliers of bio-materials who have no direct role in the raw material's ultimate use as a "biomaterial" in a medical device.

Mr. President, I would like to note that even President Clinton recognizes this provision as "a laudable attempt to ensure that suppliers of biomaterials will provide sufficient quantities of their products" to medical device manufacturers.

The bill before us today is the first step in the right direction, but certainly not the last. While we have made great progress toward reforming our current system, I believe we should do more. We need to extend protections to America's consumers in civil liability cases which have devastated local girl scout troops, neighborhood little leagues and community recreational organizations.

Furthermore, Congress should pass medical malpractice reforms to ensure that the doctor-patient relationship is protected from lawyers. Doctors complain that many times they are forced to order unnecessary tests just to protect themselves against frivolous lawsuits. This practice called "defensive medicine" costs our country over $15 billion each year.

Mr. President, the Senate should adopt this first step and continue moving forward to reform our overall liability system. Failing to enact this legislation will result in even higher costs to customers, fewer products developed and fewer jobs as companies downsize to adjust to increasingly high legal costs.

I urge my colleagues to recognize the positive impact this legislation will have on countless businesses across our

country. Ultimately, it will benefit the employees whose jobs will be secured as a result of enactment of this long overdue legislation, while at the same time, we continue to protect consumers seeking judgements against companies who have manufactured faulty products.

Mr. DORGAN. Mr. President, today the Senate will vote on the conference report on H.R. 956, the Common Sense Product Liability Legal Reform Act of 1996. I intend to vote in favor of this legislation because I believe that modest legislation in this area is necessary.

The issue of product liability reform is one of those circumstances where I think there is some truth on both sides. Tort reform is by its very nature controversial. The ability of citizens to seek redress through the courts for harm caused to them is a very important right we must respect and protect. At the same time, it is a fact that our court system in the United States is deluged with a flood of lawsuits, many of which have no merit.

Unfortunately, the excesses of some force a reaction that affects everyone. I appreciate the sensitivity with which we in the Congress must proceed in passing any Federal legislation that reforms tort laws. I realize that because of our court system and because of the activism of well meaning consumer advocates, our Nation does have safer cars, toys, and other products. If it had not been for key cases that put the fire to the feet of corporations who would rather cut corners to enhance the bottom line than concern themselves with the safety of consumers, I am convinced that there would be more exploding cars and more dangerous toys that hurt children.

Deadly and dangerous products such as asbestos, flammable children's pajamas, and exploding Ford Pintos were all removed from the market only after action was taken in court to hold the manufacturers of these products accountable. Because these cases occurred, our lives are safer as a result. There have been many cases where manufacturers were legitimately held liable for their negligent or egregious actions.

However, these cases do not tell the entire story about our tort system. Unfortunately, there are so many other cases that may have little merit that are filed, not with the goal to seek fair compensation or change the behavior of a manufacture, but are filed with a goal to get rich quick. The result is that many manufacturers and businesses are strangled in liability cases that defy common sense. These cases don't help consumers.

It seems to me that Federal action is warranted in the area of product liability suits. But, I believe that any Federal action in this area must be modest and narrowly construed. Over the past few years, I have been an active participant in the development of this legislation. In the 103d Congress, I fought against a provision that would have provided complete immunity to manufacturers of medical products and aircraft manufacturers from all punitive damage awards. The FDA/FAA defense provision, as it was called, took this reform effort way too far in my judgment. That is why I fought to have the provision removed and if this provision existed in the legislation before the Senate today, I would be voting no.

Fortunately, the bill sponsors saw fit to not include the FDA/FAA defense provision in the conference report we are considering today. As a result, we have a bill which I believe advances some modest reform without closing the door on consumers who legitimately need to look to the courts for compensation.

I believe it is important to advance this modest tort reform legislation. It is my hope that if this legislation becomes law, it will result in more reasonableness in our tort system.

I am under no illusions that this legislation is going to create a perfect world in the courts. However, I hope this legislation will create a better world that restores some moderation to excessive litigation, while not destroying the rights of consumers to seek redress for their grievances in the courts.

The PRESIDING OFFICER. Who yields time?

Mr. GORTON. Mr. President, I yield 5 minutes to the Senator from Nebraska.

The PRESIDING OFFICER. The Senator from Nebraska is recognized for 5 minutes.

Mr. EXON. Mr. President, I thank the Chair and thank my friend and colleague from Washington. I signed the conference report with regard to the product liability measure that is before us. I recommend that the Senate accept this. I hope the President will not veto it, as he has threatened.

I have been listening to the debate, and I have studied this issue for a long, long time. Over 20 years ago, when I had the opportunity to serve my State as Governor, we worked on and we enacted a piece of legislation that is related to this whole area. It was with regard to malpractice in the health care field. There were concerns about that. I listened to both sides at that time. I finally decided, in the best interest of Nebraska, that malpractice piece of legislation should go into effect to provide adequate and better health care, to keep everyone involved.

I must say, that was one of the early pieces of legislation with regard to placing caps on malpractice legislation, and I must say that it has been a resounding success in Nebraska.

I recognize and have heard the debate on both sides of the issue, and, as so often is the case, Mr. President, we do not pass perfect legislation here, but ignoring the problem that we have today, that we have had for all of these years—this is as near a place we can solve it with what I think is a reasonable piece of legislation, a piece of legislation that where, if there is gross misconduct on the part of the manufacturer or the inventor, there is some relief.

I think we accomplish very little by citing this case and citing that case. If we continue with that kind of a proposition, we will simply confuse the public at large, and maybe the House and Senate, that we should do nothing. I think if there is one thing that is obvious, it is that we have to do something. I think the "something" is this bill that has been carefully crafted, that has been worked out in committee, that has been worked out in the conference between the House and the Senate, and I believe if there was ever a true workable compromise, this is a principal example.

So, I simply salute the people who have provided the leadership in this over the years. I hope the bill will be resoundingly approved by the Senate with our vote around noontime today. Maybe we can get on with solving this problem. There is a problem. No one can deny that. I am sure many of my colleagues feel very strongly that this is a bad piece of legislation. It is not a perfect piece of legislation, but it is a piece of legislation that has been carefully crafted, compromised. I think it is the best we can do under the circumstances, and I believe we should do it.

I intend to vote enthusiastically in support of this legislation. I thank the Chair and thank my friend from Washington.

Mr. GORTON. Mr. President, I yield 5 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 5 minutes.

Mr. ROCKEFELLER. Mr. President, I thank the distinguished Senator from Washington. The debate now is about over, and we are about to vote. We are about to vote on a bill which I think is profoundly important, not only in the symbolism of it but in the reality. You cannot have an engine in a car that is invented by 51 separate people who do not communicate with each other and expect the engine to move the car forward.

Similarly, you cannot protect and extend predictability and fairness and consumer protection—for example, as witness the statute of limitations—to help people in this country get justice from injury, from defective products if the engine that they have to depend upon is invented by 51 separate people who never talk to each other, and then somebody turns the key on and who knows where the system goes, or where the car goes. Probably nowhere.

We have a system that works particularly well for a few. We have, however, a system that works particularly poorly for the most. It is the job, it seems to me, of the U.S. Senate and the U.S. Congress to try to improve the condition and the lot of our people in a fair and balanced manner. One cannot reasonably come into this Chamber all the time and say, "I'm only going to do things which will help an injured person but pay no attention to other aspects of their life," for example, whether they are employed, whether they have a reasonable expectation of having a job.

What we have tried to do in this product liability conference report is to make a fair, reasonable balance between the interests of consumers and business. We have done that. We have had asserted constantly against us that we have not, assertions which are made every year we discuss these things, which are wrong.

So now we are prepared to do something, and I fully expect the Senate will adopt this conference report. It is an important bill. I repeat that I hope the President of the United States, who I think very much wants to sign a product liability reform bill—in fact, I am told very directly that he wants to sign a product liability bill. The question is what condition must it be in. I think we are presenting the President with a fair bill, one in which the Senate did not try to expand beyond products, one in which the Senate rejected virtually all other suggestions in which the only basic change was the statute of repose.

It is a very good bill. There is no other way to say it than that. I also want to thank the Senator from Connecticut, Senator LIEBERMAN, for his enormous role in all of this product liability debate, and his chief of staff, Bill Bonvillian, who is also an extraordinary person, who has been unbelievably kind and attentive to my legislative director, Tamera Stanton, to whom I referred earlier, who is going through a difficult situation just now.

This is fair. This is the way America ought to work. The bill, I believe, will pass. I can only pray that the President will sign it. I thank the President and yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from South Carolina has 12 minutes.

Mr. HOLLINGS. How much, Mr. President?

The PRESIDING OFFICER. The Senator has 12 minutes.

Mr. HOLLINGS. I thank the distinguished Chair. I want to reserve time for the distinguished minority leader, the Senator from South Dakota, who just notified us he would like a little time here.

Mr. President, I rise to urge my colleagues to reject this legislation. The only thing that stands in the way of an act of Congress overturning 200 years of State law and placing severe restrictions on the civil rights of American citizens is the vote on this conference report.

Some try to simplify this issue as a debate between trial lawyers and manufacturers. But this issue is larger than that. This matter goes to the heart of our Nation's constitutional federalism. I am convinced that to the extent Congress can selectively preempt State law, override State constitutions, overturn State legislative decisions, and dictate to State judges and juries the standards they must follow on matters that have nothing to do with Federal constitutional rights, then States essentially have lost their sovereignty. Maintaining an independent civil justice system is the essence of a free state. This freedom, however, would be seriously eroded by this bill.

I. STATE SOVEREIGNTY/DUAL FEDERALISM

The stated purpose of this bill is to erect barriers regarding the use of the civil justice system for redress of injuries caused by dangerous products. However, I would remind my colleagues that, unlike the judicial systems of other countries, the American judicial system is rooted in democratic principles of individual redress, the right to a jury trial, and reliance on the people to resolve disputes. These were principles established by the Founding Fathers when they adopted the 7th and 10th amendments to the Constitution. Surely, issues such as whether to limit access to courts, limit redress remedies, or penalize citizens for merely bringing suits were considered by the Founding Fathers, as well as the judges and State officials that have administered our system of justice for over 200 years. But they decided against such measures, and opted instead to maintain a system that features free access to the courts, common law, and giving the people the ultimate authority to resolve conflicts.

The supporters of this bill, however, are seeking to overturn this longstanding American history and judicial precedent. They would prefer to ram through this sweeping and unprecedented legislation.

I am, indeed, confounded that the Senate is even considering this legislation. At the beginning of this Congress, Member after Member came to the floor during consideration of S. 1, the unfunded mandates bill, to declare that this would be the Congress of States' rights, where Government would be returned to the people. The Jeffersonian democracy of government was revived. If we've heard it once, we've heard it a million times, that State and local governments know best how to protect the health and safety of their citizens, and that they do not need Congress telling them what to do. How many times did we hear that the one clear message sent by the voters in November 1994 was that the people wanted to get the Federal Government off their backs and out of their pockets?

The 10th amendment, lost in the shuffle for many years, was given new light. The majority leader himself, in his opening address to the new Congress, proclaimed:

> . . . America has reconnected us with the hopes for a nation made free by demanding a Government that is more limited. Reigning in our government will be my mandate, and I hope it will be the purpose and principal accomplishment of the 104th Congress.
>
> . . . We do not have all the answers in Washington, D.C. Why should we tell Idaho, or the State of South Dakota, or the State of Oregon, or any other State that we are going to pass this Federal law and that we are going to require you to do certain things . . .

The majority leader went on to say:

> . . . Federalism is an idea that power should be kept close to the people. It is an idea on which our nation was founded. But there are some in Washington—perhaps fewer this year than last—who believe that our states can't be trusted with power. . . . If I have one goal for the 104th Congress, it is this: That we will dust off the 10th Amendment and restore it to its rightful place.

If we are going to respect the 10th amendment, Mr. President, then we must be consistent.

But consistency is not something in which this Congress seems to be interested. The same Congress that has championed States rights regarding welfare is now advancing the power of the Federal Government over State civil courts. It appears that some believe the States have all the answers when it comes to welfare and education, but for some reason are incapable of running their own courts.

To the extent any reforms are needed, the States already have instituted such measures. Since 1986, over 40 States have enacted tort reform legislation. This includes my home State of South Carolina, which enacted a major tort reform measure in 1988. The States—through their work with members of the bar, the chamber of commerce, the insurance industry, and consumer groups—have addressed concerns about the tort system, and have crafted legislation they believe is in the best interest of their citizens. The proponents of this bill, however, would override the enormous and commendable efforts and time the States have devoted to this issue, and force their own brand of reform on the States.

Ironically, during the 1994 elections, when many of those who now so vehemently champion States rights were elected, the people of Arizona considered a State-wide tort reform referendum that consisted of many of the initiatives in this conference agreement. By a 2-to-1 vote, the people of Arizona rejected the referendum. Now some Members would like to reward them by using their Federal power to force on the citizens of Arizona the initiatives they soundly rejected at the ballot box.

II. REFUTATION OF CLAIMS REGARDING NEED OF LEGISLATION

The conference report contains a number of "findings" regarding the need for this legislation. Most of the findings are repeats of the various claims that have been made over the last decade. Nevertheless, it is necessary again to set the record straight with the facts.

Finding No. 1 states:

Our nation is overly litigious, the civil justice system is overcrowded, sluggish, and excessively costly and the costs of lawsuits, both direct and indirect, are inflicting serious and unnecessary injury on the national economy.

Rebuttal:

This is the old litigation explosion claim. However, there has never been any evidence of a litigation explosion as the following data demonstrate:

A 1991 Rand study found that only 2 percent of Americans injured by products ever file a lawsuit.

A 1994 report by the National Center for State Courts found that product liability cases are less than 1 percent of all civil filings.

A 1995 study by the National Center for State Courts found that, of the 2 percent of lawsuits that are filed, 90 percent are disposed of by nontrial, such as dismissals or settlements.

In June 1994, the New York Times featured a front page story on how juries are growing tougher on plaintiffs. Citing the latest research by Jury Verdicts Research, Inc., the Times stated that plaintiffs' success rates in product liability cases have dropped from 59 to 41 percent between 1989 and 1994. A 1995 report by the National Center for State Courts shows that tort filings have declined 6 percent since 1991.

Profs. James Henderson, a supporter of State product liability reform, and Theodore Eisenberg of Cornell University released a study in 1992, which showed that product liability filings had declined by 44 percent by 1991. They concluded that by "most measures, product liability has returned to where it was at the beginning of the decade," beginning in the 1980's.

BUSINESS LITIGATION

Where is the real litigation explosion? It is in the corporate board rooms. According to professor Marc Galanter of the University of Wisconsin Law School, the real litigation explosion in recent years has involved businesses suing each other, not injured persons seeking redress of their rights. He found that business contract filings in Federal courts increased by 232 percent between 1960 and 1988, and by 1988 comprised the largest category of civil cases in the Federal courts.

In August 1995, the National Law Journal released the findings of its study of judicial emergencies in Federal courts. The study found that 33 percent of the judicial emergencies involved business litigation.

Between 1989 and 1994, of the 83 largest civil damage awards nationwide, 73 percent involved business suits. Between 1987 and 1994, just 76 of the top business verdicts alone accounted for more than $10 billion. They included: Litton Systems versus Honeywell, a patent infringement dispute—$1.2 billion; Rubicon Petroleum versus Amoco, a breach of contract dispute—$500 million, including $250 million in punitive damages; Amoco Chemical versus Certain Lloyds of London, a breach of contract dispute—$425 million, including $341 million in punitive damages; Avia Development versus American General Reality Investment, a breach of contract—$309 million, including $262 million in punitive damages. Of course, this does not include the greatest verdict of them all—the $10.5 billion awarded in 1985 in the Pennzoil versus Texaco case.

Notwithstanding the excessiveness of business suites, however, the bill specifically exempts business litigation from the legislation.

II. COMPETITIVENESS

Finding No. 2 of the conference report states:

Excessive, unpredictable, and often arbitrary damage awards and unfair allocations of liability have a direct and undesirable effect on interstate commerce by increasing the cost and decreasing the availability of goods and services.

Rebuttal:

To refute these unfounded claims about competitiveness, I simply cite the comments of Mr. Jerry Jasinowski, president of the National Association of Manufacturers [NAM], that appeared in the Washington Post editorial section on Sunday, March 17, 1996. Mr. Jasinowski severely decried those who have criticized American business competitiveness.

According to Mr. Jasinowski: the American industrial renaissance over the last 4 years has restored the United States "to the top spot among the world's economies." While some are "busy berating our capitalist system, the U.S. economy has become the envy of the industrialized world." "The American economy has quietly grown richer—gaining 8 million new jobs since 1992 and putting the unemployment rate at an historically low 5.5 percent." "In the past 25 years"—during the midst of the so-called product liability crisis—"U.S. employment has increased 59 percent and we have created more than 5 times as many net jobs as all the countries of Europe combined."

OTHER STUDIES ON COMPETITIVENESS

Mr. Jasinowski's editorial affirms other studies which have found no evidence relating product liability to U.S. competitiveness.

A 1987 Conference Board survey of risk managers of 232 corportions shows that product liability costs for most businesses are 1 percent or less of the final price of products, and have very little impact on larger economic issues such as market share or jobs.

The Rand Corporation found that less than 1 percent of U.S. manufacturers are ever named in a product liability lawsuit, and that "available evidence does not support the notion that product liability is crippling American business."

In 1991, the GAO released a study of the effects of product liability on competitiveness, and stated that it could find "no acceptable methodology for relating product liability to competitiveness."

FINDINGS ON INSURANCE COSTS

Finding No. 7 states:

The unpredictability of damage awards is inequitable to both plaintiffs and defendants and has added considerably to the high cost of liability insurance, making it difficult for producers, consumers, volunteers, and nonprofit organizations to protect themselves from liability with any degree of confidence and at a reasonable cost.

Rebuttal:

The claim that there was an insurance crisis was one of the first justifications put forth by supporters of the legislation in the 1980's. However, there is ample evidence that there never was, and is not currently, a product liability insurance crisis.

A study released in March 1995 by Bob Hunter of the Consumer Federation of America, who was formerly the Texas Insurance Commissioner, shows that product liability insurance costs for U.S. businesses amount to no more than 26 cents for every $100 of total costs.

In January 1995, the National Association of Insurance Commissioners reported that between 1989 and 1993 product liability insurance premiums declined by 26 percent.

According to the Insurance Information Institute, insurance companies' surplus, assets minus liabilities, rose from $29 billion to over $230 billion between 1977 and 1995. Surplus is the money available after all losses and bills have been paid. These figures show that, to the extent there was an insurance downfall, it sure was not felt by the insurance industry.

Additionally, according to the testimony of the American Insurance Association [AIA], the legislation will have no effect on insurance rates anyway.

UNIFORMITY

Finding No. 10 states:

The rules of law governing product liability actions, damage awards, and allocations of liability have evolved inconsistently within and among the states, resulting in a complex, contradictory, and uncertain regime that is inequitable to both plaintiffs and defendants and unduly burdens interstate commerce.

Rebuttal:

This finding is part of the proponents' claim regarding uniformity. However, contrary to the proponents' claims, the bill does not, and is not intended to, create uniformity. State law

is preempted in this bill only to the extent it favors defendant corporations. For example, with respect to punitive damages, the legislation would not disturb the law in the State of Washington since that State prohibits punitive damages, but would preempt the law in South Carolina, which permits punitive awards.

The Chief Justices of the States have indicated that the legislation is likely to create considerable confusion, and lead to more litigation, as a result of the varying interpretations and applications of its provisions by different State courts.

The bill imposes its own set of rules on State courts without imposing the same rules directly on the Federal courts. Because of the absence of a Federal cause of action, Federal courts will hear cases involving the legislation only if there is diversity of citizenship or location of the parties.

CONFERENCE REPORT HURTS CONSUMERS MORE THAN SENATE BILL

Proponents continue to state that the conference report is not expanded beyond the Senate amendment. However, the conference agreement extends well beyond the Senate amendment in undercutting the rights of victims. The bill now limits victims' rights to be compensated for harm caused by energy and utility related disasters, such as hazardous gas storage facilities, and negligent entrustment cases, including the unlawful sale of dangerous products to minors. In addition, the statute of repose has been reduced from 20 to 15 years. Once restricted to workplace products, this provision has also been expanded to cover any product that has an expected life span of more than 3 years. Further, products now covered by the legislation include used cars, elevators, children's toys, and medical devices made for handicapped citizens.

The bill has retained the abolition of joint liability for pain and suffering damages. The restriction is applicable even if there is proof that defendants worked together as a joint venture, or as parent and subsidiary.

The bill has maintained discriminatory punitive damages caps. By basing the cap on income and wealth, the bill permits higher punitive awards for individuals with the most economic advantages. In an effort to rectify the disparate treatment of high income and low income victims, a provision was added on the Senate floor to permit judges to increase punitive awards beyond the cap. Federal judges, and judges in most State jurisdictions, however, are constitutionally prohibited from increasing damages without the consent of the parties. Indeed, we find it hard to believe that any defendant would consent to higher punitive awards. The proponents stated the constitutional issue would be resolved in conference. The conference agreement, however, has actually enhanced the power of judges to increase damages, all but ensuring the provision will be deemed unconstitutional. The end result will be that additur will be removed, and the discriminatory cap will remain. Additionally, we question why Congress would pass a law it recognizes as unfair, and then shift the responsibility to judges to rectify the problem.

CONCLUSION

Simply put, Mr. President, there is no product liability crisis. Indeed, if there are problems that need to be examined in the tort system, they already are being addressed by the States, where this issue belongs.

This legislation is the epitome of congressional arrogance. It takes away from the States an area of the law that has been reserved to the States for 200 years.

What will this bill do? It will make it more difficult for consumers to be compensated for their harm from products; it will shield from liability manufacturers which consciously manufacture defective products; it will take away from the States rules of law they have carefully developed; and it will remove incentives for manufacturers to make their products safe. These are some of the results of this bill, results which are not in the best interests of our citizens.

I conclude by urging my colleagues to reject cloture on this conference report. Despite years of effort, no case has ever been made for Federal product liability law. The proponents move from claim to claim about the need for this bill, because they know that this is a sham. If there ever was special interest legislation, it is this bill. It is special interest at the expense of the constitutional and civil liberties of the American people. I urge my colleagues not to be misled by the proponents' claims, and to vote against this conference report.

There are so many things to say in the limited time. But section 106(b)(3)(C) refers to a general aviation statute of repose limitation period. It is for 18 years. That is the way the distinguished Senator from Washington started talking about this bill yesterday. It was all about Cessna and aviation and everything else like that.

All the provisions of the products bill apply to general aviation, so there are no longer protections for people injured, of course, on the ground or the air ambulance people, even though the 1994 law provided those protections. But what I wonder about, if this general aviation provision of 18 years has done such a remarkable revival of the aviation industry, why are we limiting it? There we go.

No. The Senator from Nebraska says there is a real problem and everybody knows it. That is absolutely false. We know that the States have taken care of this problem. Yes, there is a political problem, because Presidential politics has preempted everything up here in Washington.

I saw some article in one of the magazines about the campaign starting. The campaign started early last year. In 100 days we were going to do this, get rid of everybody, 10 things in the Contract, we are going to pass them in 100 days, and whoopee. And we were off, and everything else of that kind—until reality set in.

But now there is the time of some embarrassment, since some of these things have not been passed—and for very, very good reason. A good reason, of course, assuming the truth of everything that the Senator from Connecticut says, is that the State Legislature of Connecticut is ready, willing, able, alert, and responsive. He was a majority leader of it. The State of Connecticut has taken care of these problems. We all take care of these problems in the several States.

But right to the point, this bill is a travesty, Mr. President. The Presiding Officer knows it. It separates people. It separates them according to their economic worth. That is a dastardly thing to do. I cannot see people of good sense and reason voting for a thing of this kind and hoping the President will sign it. The President knows the facts. He has reiterated them in the letter. He said, if it is so good and so fair, as they plead, then why does it not apply to business—the very people who drew it up? This thing was drafted by business, of business, for business, greedy business. That is what it has been for, and the proponents all know it.

I say that advisedly. I have gotten every business award you can find. I am proud of them. I work closely with business. We have more business coming to our State than all these other States that these Senators represent. I challenge them to compete with us on taking care of business. That has been my 40-year record of public service.

So I know when they step over the line. The fact of the matter is, there is a small segment, Victor Schwartz and his crowd, stepping over the line that has picked up the political fever of "kill all the lawyers." It is the business of travesty that increases the legal costs for those trying to really try their cases. They know that these are contingency fees.

So if you get a good verdict, and it is a punitive damage verdict, you do OK. We put in the RECORD where punitive damages have disciplined these businesses. Thank heavens it has because we are all safer on account of it. That is why we get the recalls, because the manufacturers are put on notice. The proponents know that is why we are getting the recalls in our society. But now they have to go through a whole new hearing. And they talk about simplicity and transaction costs.

How can they claim simplicity with all the different proceedings they have

here now, trying to limit legal costs? They tell the utilities they can forget about strict liability, they can forget about the highest degree of care. The Senator from North Dakota and the Senator from Washington got into a very clear dialog about simple negligence. Let the boilers blow up, let the gas blow up, let it explode. The highest degree of care now is no longer required under this bill.

Yes, we put in the RECORD about the drunk drivers. I reiterate, in the letter of MADD in opposition, Mothers Against Drunk Drivers, they oppose this bill. They know and they read and they understand and they stand by their particular opposition.

It encourages the lack of care with that statute of repose on manufacturers. Manufacturers here are exercising the highest degree of care. They are not in these other lands. But now the proponents want to talk about global competition. I have touched on that. They are competing with themselves. They want to take down the high degree of care by overriding the strict liability. Punitive damages is another thing that has given us safe products in this land, safe places to work, safe places to sleep, safe drugs and food, and everything else of that kind.

More than anything else, Mr. President, it is just patently unconstitutional. Amendment VII:

> In suits of common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States. . . .

This particular bill says reexamine it at the trial court level, but keep it a secret. The judge is supposed to charge the jury under the law, stay out of the facts. But this bill says, by gosh, reexamine it in violation of amendment VII. Of course, it ignores amendment X that the distinguished majority leader has run all over the entire United States talking about, saying, "I've got one thing here in my pocket, the 10th amendment."

These folks all come up here and act like they never heard of the States from which they were sent. The States have acted on product liability over the 15 years that the Senator from Rhode Island complained about. They have acted very judiciously. It is not a problem. It is a little political gimmick in the contract. It is a shame and disgrace that we have taken up the time of the National Congress on this matter that the States have taken care of.

I reserve the remainder of my time. How many minutes do I have?

The PRESIDING OFFICER. The Senator from South Carolina has 3 minutes 30 seconds.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. I thank the distinguished Senator from South Carolina for yielding. I will use whatever leader time I may require to finish my statement.

Let me commend the Senator from South Carolina for the arguments he has again made in his summary on this debate. I applaud him for the leadership and the effort he has put forth. I very enthusiastically endorse his position. Let me also thank the distinguished Senators from Washington and from West Virginia and from Connecticut that have, as well as they have, brought this bill closer to a bill that is reasonable.

As the distinguished Senator from South Carolina said, Mr. President, it is ironic in the extreme that, in this era of devolution, in this era of States rights, in this era of empowering States with more opportunities to deal with issues at the local level, this Congress, of all Congresses, would now pass a bill that says the Federal Government knows better. It is especially ironic that this Congress would say the Federal Government knows better on an issue as profound as this, affecting victims in the worst set of circumstances.

I respect the Presiding Officer for his consistency in suggesting that devolution and new Federalism, or whatever we call it, ought to be sustained, regardless of the issue, that we ought not pick issues depending on the special interests, that we really have a responsibility to be consistent.

Certainly in this case it would require, I believe, a second look. We can do better than this. We can do better than what we are going to be voting on this afternoon.

I am very troubled by a couple of provisions. One in particular troubles me. Mr. President, to say that someone working on a defective piece of machinery is going to be protected if that machinery is functional for 15 years, but not for 16 years, to me is amazing. To ask people on the work line, to ask people on the combine, to ask people in whatever set of working circumstances they face, to accept the risk that this equipment is going to hold out after that period is more than I can support. To ask American companies to live up to their obligation, to understand how important it is that people working on assembly lines or in a field have the protection and the certainty and the opportunity to come to work knowing they will be able to come home whole is not too much to ask. A 20-year statute of repose is not too much to ask.

Mr. President, the other issue has to do with component parts. We have gone through some terrible situations in the last several years involving defective component parts. One example involves women who were given breast implants that were defective, when it was well known that a component of the breast implants posed severe health risks in the body of a woman. Now to immunize from liability people who manufacture defective component parts and to say we are going to, through statute, give them our blessing is wrong. It is wrong.

Mr. President, we can do better than this. We have to do better than this. Those of us opposing this bill will continue to do so. This fight is not over. The President has said in no uncertain terms this bill will be vetoed. I predict we will have more than enough votes to sustain a veto.

Again, this fight is not over. We can do better than this. We ought to do better than this. In working with the President, the Presiding Officer and others, we will. I yield the floor.

Mr. GORTON. Mr. President, I yield 3 minutes to the Senator from Missouri.

Mr. ASHCROFT. Mr. President, I thank the Senator from Washington. I commend the Senator from Washington and the Senator from West Virginia for bringing to the floor of the Senate a reasonable, moderate product liability bill which the President ought to sign.

The representations in this Chamber that we should do better and could do better belie the current performance of this Chamber, which for 15 years has sought to enact a bill like this, but never really brought one forward that could be passed. This is a bill that can be passed.

There can be debate about whether or not there is a litigation explosion in this country. Some can say we have too much litigation or too little. Let me give you a fact. The fact is that tort costs are 2.3 percent of the Gross Domestic Product in the United States, according to the Tillinghast study. That is 2½ times the world average. In short, we have the most expensive tort liability system in the world. It is time for us to change that. We must stop wasting money by exchanging it between the trial lawyers and punitive damage recipients instead of using it to create the competitive and economic edge that will allow us to be successful—to create jobs and build equipment, and to grow this economy. We need to revitalize the industrial base of the United States of America.

Uniform standards in product liability law would help return good products to the markets, reduce the price of consumer goods, and break the legal shackles on American businesses to help them become more competitive internationally.

This bill will make products safer. Litigation, which we have had plenty of, stifles innovation that makes products safe. Overall product safety in the United States improved steadily in the first half of this century, when a much more limited liability system was in effect. We need to make sure that safety, not greed, is what is emphasized by our laws in this area.

Let me make another point. We need to make this fundamentally clear: No person will be denied the right to recover actual damages under this bill. Every cent of damages, even damages for pain and suffering previously that has been available, is available under this bill. The bill has limits on punitive damages, but those are damages to punish. Those are not damages to make a person whole for what has happened to them.

One last point that I raise, this bill was pared down from what it ought to be and what it should be—in an effort to accommodate the President. We ought to really be extending some tort reform protection to our charities. This bill does not provide protection to churches, to voluntary and charitable organizations, which means there will be no liability protection for volunteers in the Little League, the American Red Cross, the Salvation Army, the American Cancer Society, for people who run soup kitchens. We need an explosion of people helping solve America's endemic social pathologies. What do we have in the United States instead? A tort system which threatens everyone who tries to help his neighbor with the potential of bankrupting liability.

Dick Aft, president of the United Way & Community Chest of Cincinnati, put it this way, "The litigious climate imposes a cost for all charities, costs that can be measured in resigning trustees, lost volunteer hours and sky-high insurance premiums. These are tough times for charities. The last thing we need is a legal system that adds to our burden."

Mr. President, as long as our litigation system forces a would-be volunteer to consider whether the risks of being sued outweigh the benefits of contributing one's time and talent to charitable organizations efforts to solve society's problems will continue to be unnecessarily stymied.

In order to try to entice the President of the United States to go back to his previous position supporting federal product liability reform, the Senate has had to take the protections for non-profits out of this bill. Then the President still comes out and opposes the bill. As a result, I do not know how to trust the President on anything he says. He previously said he supports it. Now he says he does not.

Maybe we should distrust his latest representation that he will veto this. We should pass this legislation and give the President a chance to flip-flop back to the right side of the agenda, and I do not mean political right, I mean right versus wrong as a matter of good government policy. This bill is right, it provides a reasonable framework to do business in the United States. It will protect consumers. I believe it should be enacted for the good of consumers and the good of the country.

Mr. GORTON. I yield 30 seconds to the Senator from Virginia.

Mr. WARNER. I thank the distinguished managers of the bill. I strongly support the bill and commend the managers of this bill.

Mr. President, this is a jobs bill. It throws a liferaft to small business. Small business today is being buffeted in the turbulent seas of lawsuits, yet it affords adequate protection in litigation for those who are wrongfully hurt.

Mr. President, I rise in support of the Commonsense Product Liability and Legal Reform Act of 1996. I do so because I believe that this bill is strongly proconsumer. The opponents of this bill may claim to be defending the rights of the injured. Well, this bill not only defends their rights to be fairly compensated for injuries caused by defective products, but also defends the rights of the rest of us not to pay for the outrageous verdicts, settlements, and insurance payments that American businesses pass on to consumers because of our broken legal system.

It is important to remember what exactly this bill does. There are a number of commonsense provisions which nobody besides the trial lawyers could oppose. For example, no longer would companies be liable when the injured party was drunk, on drugs, or otherwise responsible for their own injuries, or when the consumer had altered the product. It also would provide protection to companies producing biomaterials for use in medical implants: These sections are necessary to allow these companies to help save lives and to worry less about being sued for merely providing raw materials which ended up in a heart valve or pacemaker.

Then there is the issue of punitive damages which have been the subject of so much discussion. Again, it is important to remember what punitive damages are. Imagine a plaintiff injured by a defective product, say a car with faulty brakes which causes an accident. The plaintiff will be able to recover every last penny of lost income, medical costs, and financial losses he can demonstrate. In addition, he will be entitled to recover for pain and suffering as the jury sees fit and in relation to the injuries suffered. Then, on top of being completely compensated, he can ask for punitive damages which may have no relation to the amount he received for compensatory damages. Sometimes punitive damages are granted, sometimes not: more often a company is forced to settle a case to avoid the possibility of a outrageous jury verdict. This is a pure lottery having nothing to do with the injuries suffered by the plaintiff which mainly benefits the lawyer working on a contingent fee. It is a crazy way to dispense justice.

My State of Virginia has recognized this problem and placed a reasonable cap on punitive damages. But Virginians buy products produced in other States and pay for the costs of this legal lottery created by the legal systems in other States. President Clinton says that this bill usurps the power of the States. Commerce, however, is nationwide and where States are placing undue burdens on interstate commerce, Congress is correct to step in and make reforms.

Now remember also that when President Clinton was Governor, he endorsed uniform legislation for punitive damages. Even the Washington Post has recognized that the President and the opponents of this bill are on the side of the trial attorneys, rather than American consumers and businesses.

I urge that the Senate move to consideration of this badly needed legislation and that it be enacted as soon as possible.

Mr. GORTON. Mr. President, article 1, section 8 of the Constitution of the United States reads in part as follows: "The Congress shall have power to regulate commerce among the several States." The purposes of this bill, as outlined in this bill, read as follows:

> Based upon the powers contained in Article 1, Section 8, Clause 3 of the 14th amendment of the United States Constitution, the purposes of this act are to promote the free flow of goods and services, to lessen burdens on interstate commerce, and to uphold the constitutionally protected due process by, (1), establishing certain uniform legal principles of product liability which provide a fair balance among the interests of product users, manufacturers and product sellers; (2), placing reasonable limits on damages over and above the actual damages suffered by a claimant; (3), ensuring the fair allocation of liability in civil actions; (4), reducing the unacceptable cost and delays of our civil justice system caused by excessive litigation which harm both plaintiffs and defendants; (5), establishing greater fairness, rationality, and predictability, in the civil justice system.

That is precisely what this bill is designed to do, Mr. President. That is precisely what this bill does.

I yield the remaining 2 minutes to the distinguished chairman of the Commerce Committee.

Mr. PRESSLER. Mr. President, I rise in strong support of this legislation. I want to pay tribute to both Senator ROCKEFELLER and Senator GORTON who have had such great courage, leading this controversial bill and bringing it here. This is perhaps one of the most important pieces of legislation this Congress will consider because of the benefits it will have for small business.

Senator GORTON, who has appeared before the Supreme Court 14 times, is a legal expert. His expertise in explaining this bill, both in the committee and on the floor, have been very, very valuable. This bill would not be here without Senator SLADE GORTON. He has been able to explain this bill, the technical parts of it.

Senator ROCKEFELLER, in my opinion has shown great courage. I wanted to

use my time to pay tribute to those two leaders who have fought so long and hard through the committee.

I strongly support this legislation.

Mr. GORTON. Mr. President, I simply would like to say after this extended debate, not only over the period of the last 2 days but over the period of the last year, and for that matter several Congresses, that it is wonderful to have at least this phase of it completed. This very important element in the reform of our country's legal system would not have been completed with this degree of success without the help of both many Members and a significant number of staff.

When one names names, one runs the risk of leaving out many people who deserve credit, but particular credit from my perspective belongs to Lance Bultena of the Commerce Committee staff, and my own Jeanne Bumpus and Trent Erickson. Together they have put in so many hours on this subject that it cannot possibly be measured, and have done a wonderful job in educating and advising me.

For Senator ROCKEFELLER, Jim Gottlieb, a magnificent and skilled attorney, and Ellen Doneski have provided similar services. All of my cosponsors I wish to thank. All those who voted with me, I wish to thank. Most particularly, however, is the Senator from West Virginia [Mr. ROCKEFELLER]. We have come to be close personal friends during the course of the many years that we have worked together on this subject. He is a wonderful, thoughtful, and hard-working individual. In this connection, he is a courageous individual with the willingness to take on a majority of his own party and his own President.

His devotion to the public interest is not exceeded by any Member of this body. The ability to become such a close personal friend has been an important ancillary privilege of leading the debate on product liability.

With that, Mr. President, I am sure it is time to move on.

Mr. President, I yield the remainder of our time.

The PRESIDING OFFICER. The question is on agreeing to the conference report to accompany H.R. 956.

The yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] is necessarily absent.

The result was announced—yeas 59, nays 40, as follows:

[Rollcall Vote No. 46 Leg.]

YEAS—59

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

NAYS—40

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

NOT VOTING—1

Kerrey

So the conference report was agreed to.

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

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

The motion to lay on the table was agreed to.

WHITEWATER DEVELOPMENT CORP. AND RELATED MATTERS

CLOTURE MOTION

The PRESIDING OFFICER (Mr. FAIRCLOTH). Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant 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 motion to proceed to Senate Resolution 227, regarding the Whitewater extension:

Alfonse D'Amato, Dan Coats, Phil Gramm, Bob Smith, Mike DeWine, Bill Roth, Bill Cohen, Jim Jeffords, R.F. Bennett, John Warner, Larry Pressler, Spencer Abraham, Conrad Burns, Al Simpson, John H. Chafee, Frank H. Murkowski.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to Senate Resolution 227 shall be brought to a close? The yeas and nays are required. The clerk will call the roll.

The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from Vermont [Mr. JEFFORDS] is necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] is necessarily absent.

The yeas and nays resulted—yeas 52, nays 46, as follows:

[Rollcall Vote No. 47 Leg.]

YEAS—52

Abraham	Frist	McConnell
Ashcroft	Gorton	Murkowski
Bennett	Gramm	Nickles
Bond	Grams	Pressler
Brown	Grassley	Roth
Burns	Gregg	Santorum
Campbell	Hatch	Shelby
Chafee	Hatfield	Simpson
Coats	Helms	Smith
Cochran	Hutchison	Snowe
Cohen	Inhofe	Specter
Coverdell	Kassebaum	Stevens
Craig	Kempthorne	Thomas
D'Amato	Kyl	Thompson
DeWine	Lott	Thurmond
Dole	Lugar	Warner
Domenici	Mack	
Faircloth	McCain	

NAYS—46

Akaka	Feinstein	Mikulski
Baucus	Ford	Moseley-Braun
Biden	Glenn	Moynihan
Bingaman	Graham	Murray
Boxer	Harkin	Nunn
Bradley	Heflin	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Johnston	Robb
Byrd	Kennedy	Rockefeller
Conrad	Kerry	Sarbanes
Daschle	Kohl	Simon
Dodd	Lautenberg	Wellstone
Dorgan	Leahy	Wyden
Exon	Levin	
Feingold	Lieberman	

NOT VOTING—2

Jeffords Kerrey

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 46. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

PRIVILEGE OF THE FLOOR

Mr. GORTON. Mr. President, I ask unanimous consent that A.J. Martinez of Senator BENNETT's staff be permitted privilege of the floor during consideration of the Public Rangelands Management Act.

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

PUBLIC RANGELANDS MANAGEMENT ACT

The PRESIDING OFFICER. The Chair lays before the Senate, S. 1459, the Public Rangelands Management Act, with 75 minutes equally divided on the Bumpers amendment.

The clerk will report.

The bill clerk read as follows:

A bill (S. 1459) to provide for uniform management of livestock grazing on Federal land, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Domenici amendment No. 3555, in the nature of a substitute.

Bumpers modified amendment No. 3556 (to amendment No. 3555), to maintain the current formula used to calculate grazing fees for small ranchers with 2,000 animal unit

months [AUM's] or less, with certain minimum fees, and establish a separate grazing fee for large ranchers with more than 2000 AUMs.

AMENDMENT NO. 3556, AS MODIFIED

Mr. DOMENICI. Mr. President, Senator BUMPERS is here. Might I inquire of Senator BUMPERS, we do not need our entire 37 minutes. Is there any chance, in the interest of moving the Senate's business along, you might get by with a little less of your time so that we could vote a little earlier?

Mr. BUMPERS. I am quite sure we will not use all of our time, either. We will be happy to yield the balance of such time. I only know of two people on this side, Senator JEFFORDS and I, who will be speaking.

Mr. DOMENICI. Thank you. Mr. President, on this side, might I say in earshot of staff and administrative assistants, that some Republican Senators have indicated they want to speak on this very amendment. Senator CAMPBELL has indicated, the distinguished Senator from the State of Colorado; I think Senator CRAIG has indicated that he would like to speak; and perhaps a couple of others. Let me put the word out, we are trying very hard to move this bill along and use as little time on the amendments as possible. If you could get hold of me, perhaps I could set up a time, and perhaps we could agree at a certain time that Senator CAMPBELL will speak for 8 or 9 minutes. If we can work to arrange that, I will not have to be here anxiously wondering who is coming because they will have a time set.

Mr. President, let me suggest that this amendment with reference to grazing fees, if it were adopted and if it becomes law, would put out of business, in this Senator's opinion, hundreds and hundreds of small ranches and ranching families that have been the backbone of this kind of activity for a long time. Let me yield myself 5 minutes and see if I can make the case for that, and then I will yield back to Senator BUMPERS.

Mr. President, first of all, this amendment attempts to set up a two-tier fee system. That two-tier system that is established here, the distinguished Senator indicates it is only going to have an impact on the very large ranches. I want to get to that in a moment to try to make sure that the Senate understands that all grazing permits do not have the same tenure. Some are for 3 months, some are for 5 months during the year. In a State like New Mexico, parts of Arizona, parts of California, and parts of a few of the other States that have year-long grazing.

Some private property, small portion of State property, and Federal leases make up a ranching unit in a State like mine. We are called water-based States. Essentially, the water and everything is on that unit. So you do not move the cattle off to public property for part of the year. The livestock are there all the time.

As a consequence, when the distinguished Senator who had in mind that this would be just for very, very large ranches, those numbers did not take into consideration a ranch in New Mexico, Arizona, or California, that had 12-month-a-year permits and was substantially—that is, a lot of the property—federally controlled. I will come back to that point when I get the actual numbers.

Having laid the foundation to establish this fact that it will apply to small ranches, not large ranches, that are on a 12-month basis and have a lot of public domain, let me tell you what we try to do in the bill. We attempt to increase the grazing fee 37-percent. We intend it go up to $1.85. This is a 37-percent increase. Now, Mr. President, in addition to a 37-percent increase, we are aware of the fact that you cannot have ranching units continue to operate, and have prices go arbitrarily up in total disregard for the market, based upon what the State might charge for completely different land. Ours is based upon the 3-year rolling average of the gross value of the commodity, which takes into account such things, Mr. President, as this year where cattle prices have come down 30 percent to 35 percent. It is obvious you should not be increasing fees. You could not on private land. The market would not bear that. You should not increase it arbitrarily under a formula when the gross value of the product is coming down.

I stress gross value. Senator BUMPERS, in the mining reform debate, has always wanted gross value. We use gross value.

In addition, we use it on figuring out the interest component, so we get a market movement, the 10-year average of the 6-month Treasury bills, so that we have a very good way to establish stability and let the leases go up, but not go up in total disregard to the market.

Now, Mr. President, under the Bumpers proposal, the permits could be as much as $3 per animal unit per month up to $10 per month. I must say to the Senate, not even Secretary Babbitt, in his wildest dreams about what we should charge, had anything like $5, $6, $7, or $10, which some of the permits would be worth under the Bumpers proposal. And he had $4.60 once and came off that because everybody told him it was absolutely ludicrous and the ranchers would go broke.

Incidentally, the Department of Interior and Secretary Babbitt never supported, and to this day do not support, having two different fee schedules, depending upon the size of the ranch and the number of units and the number of cattle you graze, for a lot of reasons. It is arbitrary. It was said it will not work, and obviously there are many other reasons.

I note that the distinguished Senator from Arkansas would suggest that because States have a different fee schedule, we should follow them. I want to make three or four points about that. First, Senators must note that many of the State leases are exclusive leases. That means the only thing you can do on them is graze. From the very beginning, the Federal leases are not exclusive. They must be used for multiple purposes. That is a very different concept of what you can use it for. If you can only use it for that, to the exclusion of all the other uses, obviously, it would be worth more.

Likewise, many States have very few regulations, as compared to the Federal Government, making it more attractive for the rancher. Last but not least, for the most part, the State lands are a very small portion of a unit of ranching. The Federal land is more often a very large part of that unit. And so, to be able to exist, you have to have stability on that Federal side, and you have to have something that is reasonably consistent with a formula that acts upon the price of the commodity, such as ours.

I will put in the RECORD that under the amendment which purports to save small ranches, and charge large ranches a lot more—I will give you just two numbers. If 95 percent of a unit is Federal land—and there are a number of those—in the State of New Mexico, the maximum number of cows that you can have on this ranch to get into the lower-tier price is 176—not 500, not 1,000, but 176. The ranching unit could be between 50 and 95 percent Federal land, and the number of head would be between 334 and 176.

Mr. President, this just shows when you try to establish these arbitrary formulas, you have to find out really everything that is involved.

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

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

PERCENTAGE OF NEW MEXICO RANCHES WITH VARIOUS LEVELS OF RELIANCE ON FEDERAL LAND FOR GRAZING CAPACITY

Reliance on Federal land	0–5 percent	5–50 percent	50–95 percent	>95 percent
Percent of all ranches in New Mexico	49	21	26	5
Max. number of cows for small rancher exemption to apply	>3,340	3,340–334	334–176	176–167

Adapted from Torell et al. (1992).

Mr. DOMENICI. Mr. President, this amendment will not, as it purports to, have any positive effect on small ranchers staying in business in New Mexico and in the other States of the Union. There is a lot more to say, but distinguished Senators are here on our side. I have used 8 minutes, which means we have about 25 minutes left.

Senator CAMPBELL, how much time would you like?

Mr. CAMPBELL. About 10 minutes.

Mr. DOMENICI. The Senator from Wyoming needs 10 minutes. As soon as Senator BUMPERS yields the floor—does he want to speak now? We can yield to Senator BUMPERS for 8 or 10 minutes and come back and have them use their time.

Mr. BUMPERS. Is the Senator yielding the floor?

Mr. DOMENICI. I was trying to get an agreement so we would know who was speaking on our side.

Mr. BUMPERS. I do not have a schedule in mind. I do not have a certain length of time that I am going to speak. I will yield myself such time as I will use.

Mr. DOMENICI. On our side, when one of our Senators is able to get the floor, we have agreed that Senator CAMPBELL will speak for 10 minutes, and the Senator from Wyoming will speak for 10 minutes.

I yield the floor.

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

Mr. CAMPBELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. CAMPBELL. Mr. President, before I stepped on the floor a few minutes ago, something happened. I have a friend that came here from Colorado. He ranches out there. He was teasing me, and he said, "What is Congress' only Indian doing in here defending the cowboys?" I have to tell you, Mr. President, I had a good laugh with him, but this is not about cowboys and Indians. This is about real families. Some happen to be Indians, who are cowboys, by the way.

Anybody who knows the ranch lifestyle out West knows that ranchers grew up with guns. They learn how to use them from childhood, and they get good with them. They use them for protection and for hunting. I guess the first thing they learn about guns is that you try to hit what you aim at. I have to tell you, I admire my colleague from Arkansas and, certainly, Senator JEFFORDS, too, but they are not going to hit what they are aiming at.

As I understand both of their amendments, it is like hunting a wolf that gets in your lambs or your calves with a shotgun. You may get the wolf, but with a scatter-gun approach, you get everything else, too.

I believe Senator BUMPERS' amendment and Senator JEFFORDS', too, is really aimed at corporate freeloaders. But by putting everybody in the same category, it is certainly going to hit ranchers that are full-time ranchers, with no other income except ranching. I think that is a very sad mistake. I think they should both be opposed. To put them in the same category is simply not fair.

They are trying to define, as I understand both amendments, the difference between real ranchers and nonranchers. But the approach they have taken puts the large ranchers and the small ranchers in the same category as the nonranchers. And so when we hear the debate, they often use Hewlett-Packard, Simplot, Anheuser-Busch, and many of the big corporations who, somehow, in the past, have gotten some of the permits and, in fact, probably use them as tax writeoffs or some kind of a tax structure in order to get tax breaks from the products they are producing. But they are not what we call "real ranchers." I do not think anybody here from the West is trying to defend people who have used the ranching industry for a tax writeoff. What we are trying to defend and protect are the real ranchers, the family ranchers.

There was some reference made to ranchers who have made it big. Clearly, some ranchers have made some money. As Senator GRAMM, our friend from Texas, said, "Welcome to America." What is wrong with that if they made it by honest labor, made the ranch grow, and have weathered storms, drought, wolves, cats, and everything, and they managed to make a little more money and invest in something else or buy some more land? What in the world is wrong with that in this country? Yet, when they succeed, they are sort of put in the category of preying on the American public and somehow taking advantage of the American public because they have succeeded.

I think that also is not only unfair but it is wrong. This shotgun approach very clearly of putting the ranchers in the same category as those people who use ranching as a tax break is simply wrong to do.

Senator BUMPERS said yesterday—I mentioned it last night—that we should watch where the money goes. And I have to tell you, I live among family ranchers. I know where the money goes. It goes to Main Street by and large—to the hardware stores, to the movie theaters, to the used car lots, to the school districts through property taxes, to the fire district, and to every other special district you can imagine. Very little goes to recreational pursuits. If they have any money left usually it is put back into the herd, or into the land, or some way to improve their own family lot. They do not, I know, take vacations to Nice, France, or to Montserrat, or somewhere else like the corporate people do that the Senator is aiming to get.

So I think both of these amendments are probably going to miss the target and get the wrong people.

We also dealt a little bit last night with the question about fair market value. And the accusation, of course, is that ranchers on public lands are not paying a fair market value because, if you compare it with what the rancher is paying on private lands, it is much lower. That is right. It is probably much lower.

We have a small ranch. And we sometimes let other ranchers rent some of our pasture. And I know there is a difference. But there is also a difference in the amount of work they have to put up with on private land, whether it is rotating the fields, whether it is irrigation, or a lot of other things that come into play that make the difference.

To try to charge the person on public lands the same amount I frankly just think would simply run a lot of them out of business, and it simply will not work. I often compare that question of fair market value with some of the other things that we have out West. I live near Durango, CO. Durango is near a world famous archaeological site called Mesa Verde, a cliff dwelling that everybody in this country knows about. It is run by the National Park Service. If you go to the cliff dwellings it costs you $3—as I recall from the last time I went—to go in, for an adult to get really a great historic cultural experience. You can stay in there for half a day, or all day, for that $3.

Just down the road apiece in downtown Durango is another cultural and historic activity. It is in private ownership. It is the old train called "The Durango to Silverton Train." It has been there 100 years. That old train carries about 250,000 people every year, and you get a marvelous western experience. But it costs you about $30 to go on that train. If you say that we are not getting fair market value from the things that are being done on public land, maybe we ought to raise the park fee to $30 to compare it with the other experiences that people are getting a few miles away on the train. If you said that to the people in this audience, or to the people watching the proceedings today, most of them would tell you that you are nuts. They simply will not pay it.

Yesterday, I mentioned the zoo in Denver. It cost $6 when you go to the zoo. You see wild animals. They are caged but they are basically wild, whether it is deer, or elk, or bear, or wolves. Yet, when you go into the national forests you can often see those same animals for free. Maybe we ought to charge everybody that goes in the forests $6 so we get a fair market value for viewing those animals as they get when they go to the zoo.

I could go on and on about the difference it would cost. Go cut a Christmas tree. You need a $5 permit from the Forest Service. But it cost $5 per foot if you go downtown. If you suggested to people that we are going to charge $5 a foot when they go into the forest to cut a Christmas tree, you would have a rebellion on your hands.

So I think the whole discussion of fair market value simply does not wash.

So I want to come in and restate my opinion on this. I think we ought to

leave this bill alone. It has been worked on for virtually years. I have been involved in it myself for over a decade. Senator DOMENICI has taken a leadership role in bringing to the floor of the Senate what I think is about as good a balance as we could put together.

I hope my colleagues will resist any attempt to change that and oppose both the Bumpers amendment and the Jeffords amendment.

Thank you, Mr. President. I yield the floor.

Mr. BUMPERS addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. BUMPERS. Mr. President, I yield myself such time as I may use.

First, I want to point out that while this is commonly referred to as a western issue, it is also a national issue. The 270 million acres of land that people control to graze cattle in the United States belong to the taxpayers of America. The public land may be located in Wyoming. It may also be located in Wyoming, Idaho, or Nevada. However, it is owned by the taxpayers. And 100 United States Senators have a solemn duty to protect the taxpayers' interests.

Unhappily, these so-called "western issues" somehow or other fall into the category of what my mother used to say as "Everybody's business is nobody's business." Unless you have a significant number of grazing permits in your State, you do not immerse yourself into these kind of issues.

Why am I involved in it? No. 1, I sit on the committee from whence the Domenici bill was reported out. No. 2, I am an unabashed environmentalist and I am concerned about the conditions of the rangeland. Third, and above all, I am totally committed to fairness.

Yesterday afternoon, speaking on this amendment, I pointed out that when I first discovered that the U.S. Government was selling its land for $2.50 an acre for miners to mine gold and silver, I was utterly awestruck and did not believe it. I found out that it was indeed true. That law is still on the books. The mining law was originally intended to encourage people to go west and help small mom- and pop-mining operations succeed.

As I delved into the mining law, I discovered that it ain't mom and pop at all. Who is it? Who is mining the billions and billions and billions of dollars worth of gold, silver, platinum, and palladium off of Federal lands? It "ain't" mom and pop. It is Bannister Resources, the biggest gold company in the world, who bought the gold for $2.50 an acre. They are still doing it. It is Newmont Mining Co., one of the biggest gold producers in the world. It is Crown Butte, and the list goes on. It is not mom and pop. It is the biggest corporations—not in America but in the world—who are mining not only gold but mining the U.S. Treasury which also happens to belong to the taxpayers of America.

So when I began studying the grazing issue I found that, No. 1, the amount of money involved is infinitesimal. It is about $2 billion worth of gold that is being mined off Federal land every year, for which we do not get a dime—$2 billion worth. All of the 22,000 grazing permits in this Nation only produce $25 million. I would be willing to forsake all of the grazing fees except for just the element of fairness. It is not that much money. But it is not fair.

So what is my amendment about? I invite you to look at a chart.

We permit our public rangelands to people on the basis of what we call an AUM. That is an "animal unit month." Right now we receive $1.35 per AUM for every cow, or horse, or five sheep that graze on Federal lands under these permits. The fee was $1.85 in 1986. It is $1.35 now.

So who are these people that have the permits—these little mom and pop ranchers you have been hearing about?

Here they are. Here are the 91 percent of the small ranchers my colleagues on the other side say they want to protect. Count me in, Mr. President. I do, too. My amendment would cost less by the year 2005 than the amendment of the Senator from New Mexico would cost, so do not talk to me about who is being fair to small ranchers. These 91 percent of the permittees control only 40 percent of the animal unit months. They are not hurt under my amendment. They should have no squawk at all. Do not shed any tears for them because of my amendment.

What else does my amendment do? Look at the right-hand side of that chart. Mr. President, 60 percent—60 percent—of the animal unit months are held by this 9 percent. Nine percent of the permittees own 60 percent of the AUM's. If you want to think of it in pure terms of acreage, 2 percent of the permittees own 50 percent of the 270 million acres.

Is that fair? You say yes. Let me add something else to the equation then. Who is that 9 percent of the permittees? There they are. This is just a smattering, just a small list. Anheuser-Busch, the 80th biggest corporation in America. In 1994, they were on Forbes list as the 80th. Anheuser-Busch has 4 permits controlling more than 8,000 AUM's. My amendment only raises the fees on people who have more than 2,000 AUM's. Yes, my amendment would affect Anheuser-Busch. My amendment would affect Newmont Mining Co,, the biggest gold company in this country. Newmont Mining Co. controls 12,000 AUM's. Small mom and pop operation. Poor little old rancher out there struggling to survive. Biggest gold company in the United States.

Who else? Hewlett-Packard. Maybe you have one of their computers in your home. Poor little old rancher Hewlett-Packard, we have got to protect them. Hewlett-Packard runs cattle on only 100,000 acres of public rangelands. They run cattle on those public rangelands because those lands adjoin their ranch.

What are we doing here? It is sickening. Here is a man—one Senator rose in the Chamber yesterday and said he is a wonderful man, a very engaging person, a good citizen. I do not know him. I am sure people who know him like him a lot—an 85-year-old billionaire, not a small mom and pop rancher, a billionaire, J.R. Simplot, from the State of Idaho. What does he have? Well, he is not all that big. He only has 50,000 AUM's. Mom and pop rancher?

Here is a Japanese company. They control 6,000 AUM's on 40,000 acres. You look at those. The list goes on and on. I have another list here. I am not going to bore you with all of them. The biggest corporations of the United States of America mining the U.S. Treasury, and who can blame them as long as they know this body is not going to do anything about it.

A Senator who is no longer here, a Republican Senator, whom I admired very much, when I first took on the mining issue I walked over to him, and I said, "I need a Republican colleague to cosponsor this bill if we are going to change the mining laws of this country." I explained to him how the Department of the Interior actually issued deeds to people for $2.50 an acre that had billions of dollars' worth of gold under it. I said, "All you have to do is put up 4 stakes for every acre you want to claim. If you find gold underneath, it is yours for $2.50 an acre. How about joining me in this crusade?" He said, "I'd like to, but I think I will go to Nevada and start staking claims." At least he was honest about it. He was being facetious, of course,

All we are saying in our amendment is that Anheuser-Busch and Hewlett-Packard and people like that are going to have to pay an average of what you would pay if you were renting State lands. The States cannot afford to give away the public domain like we do. They do not own the public domain. They own some land. The State of Arkansas owns some of its lands. Your respective States own some of the lands there, too. If those little mom and pop operators go to the State of Montana or the State of Wyoming and say, "I would like to lease some of this land for $1.35," they would laugh them out of the State capitol building.

The Senator from Colorado just left the floor. You want a permit in Colorado? Not for $1.35 per AUM but $6.50. They are not stupid. Do you know what else? There is a line of people waiting for a permit in Colorado.

Then look at Wyoming. Go into Cheyenne and say, "I would like a permit on some State lands to graze some

cattle." No. 1, they would say, "We are sorry; we do not have any land at the moment, but if we did it would cost you $3.50 an AUM," not $1.35 like "Uncle Sucker" gets. And in Montana, the home of my distinguished good friend across the floor, $4.05.

Our amendment says to that 9 percent, mostly America's biggest corporations, we would rather you leave the land and make it available to small people to make a living, but if you insist on keeping it, we want you to at least pay the weighted average for permits that the State lets in the State where your land is located. Who can quarrel about that?

Mr. President, I will close by just simply saying two things. You know who my amendment affects? Ten percent, 10 percent of the permittees, and they are the biggies. Only one State, Nevada, would have more than 10 percent of its permittees covered by my amendment. I did not know until I looked this over.

For the interest of my colleagues who may or may not be in the Chamber but who I hope are listening, here is how your State would be affected: Arizona, 10 percent; California, 8 percent; Colorado, 5 percent; Idaho, 7 percent; Montana, North Dakota, and South Dakota, 2 percent; Nevada, 39 percent; New Mexico, 10 percent; Oregon, Washington, 8 percent; Utah, 10 percent; Wyoming, 9 percent.

Is it any wonder people think campaign contributions play a role in what happens around here? There is no justification for allowing this to happen. Since 1981, the grazing fee for cattle grazing on private lands has gone from $7.88 to $11.20 per AUM. The fee on State lands has increased from $3.22 to $5.58, and Federal grazing fees in real dollars have gone from $2.31 to $1.61, to this year's $1.35.

I say to my colleagues, I would like to appeal not only to your sense of fairness but to your sense of compassion. At a time when 100 Senators committed to a balanced budget and we are cutting education, we are cutting environmental funds and housing funds and school lunches and Medicaid and Medicare, and everything that is necessary to give people at least a fighting chance at a piece of the action, a piece of the rock, we allow things like this to go on. It is unconscionable.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. Mr. President, I yield myself 1 minute, and I want to yield to my colleague from Montana.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I guess I am sorry the Senator has suggested anyone who does not agree with him is a victim of contributions. I think that is not a very appropriate remark.

Mr. BUMPERS. Senator, I want to apologize for that remark. I am sorry. There is a certain personal thing in that, and I regret it. I regret I said it. I am sorry.

Mr. THOMAS. Mr. President, there are a couple of things I think are important here. One is the predication of this idea. This amendment is based on the idea that there is a subsidy here.

Yesterday I reported on the Pepperdine University study, an unbiased study that indicates very clearly this is not a subsidy. If you come from this area, where we have 8 inches of rain instead of 40, you will find that this is not a subsidy and Pepperdine University says that Montana ranchers—this was in Montana—who rely on Federal lands do not have a competitive advantage over those who do not.

Second, it seems to me we enter here into a great deal of class warfare which I think is unnecessary. Yesterday, the Rock Springs Grazing Association was mentioned as one of these corporate robbers. Let me tell you what the Rock Springs Grazing Association is. It was started in 1909 in southwestern Wyoming to stop overgrazing which was taking place in the Red Desert, which, by the way, is the largest grazing district in the whole BLM in this country. The association breaks down roughly this way: 550,000 deeded acres are in here. This is what is called the checkerboard; 450,000 are leased from private and 900,000 are Federal permits in the checkerboard. They are all intermixed. There is no fencing. You cannot use one from the other. There are 11,000 there.

What is the association? It is 64 shareholders, 64 family ranchers, that is who it is. It is not a corporation. It is 64 family ranchers that use that.

So I think, really, when we take a look at this thing, as I said yesterday, this is a unique circumstance. It is very easy to come from somewhere else and say, "This is the way it is at home." Well, this is not home. This is a unique aspect where your State is 80 percent owned by the Federal Government. We do have some feeling about it. It is our economic future.

I yield 4 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, I thank the manager of the bill. Let us just talk about it from an environmental standpoint.

Basically, what the amendment of my friends from Arkansas and Vermont does, or the amendments do, is throws us right back into this old class warfare again, the "haves" and the "have-nots." Nobody is asking for that kind of situation.

There is no doubt in my mind, my friend from Arkansas is a dedicated and a wild environmentalist. Every figure that we can give you is backed up by facts, that there is more wildlife on public lands now than ever in the history of this country. When you take off grazing management—we cannot tell the antelope not to graze the same time the cattle do, or the deer, or the elk. They all have the same forage. They all get along on the same range. That is why we have more of them now.

But when the management of that resource goes away, do you know what goes away? Water. And, folks, nothing living goes out there in that country without water. Strictly from an environmental standpoint, pull all the cattle off, get all the people out of there, and watch that range turn into the way it was at the turn of the century, with nothing on it—no life, no water. Wind erosion is rampant. That is what we get into.

If these amendments prevail, the impact it has on cooperative—as my friend from Wyoming said. These things sound big, but they are a bunch of little folks who throw together enough to run their cattle and their sheep. Rock Springs, WY is a perfect example.

Another thing, we have two cooperative agreements, in Fleece Creek and Wall Creek. This is where environmental groups, U.S. Fish and Wildlife, Montana Fish and Wildlife, the Stock Growers, BLM, and the Forest Service, all got together and made out a grazing pattern and developed a plan, to where they can graze and where they cannot graze on what part of the year.

Do you know what? It is working. It is working on the ground. It is working because local groups got together and solved a problem, instead of going down this road of throwing everything back into the courts again, into an adversarial environment in which we have to do business, because it cracks up communities both within and from without.

I know there are folks around here, in the sound of my voice, who say as soon as some outsider comes into our town and tries to make a decision for us, what happens? Polarization.

Montana has three fees. There are different fees for different Federal lands, State lands—but, you know, there is a lot of difference in the lands, the carrying capacity, what they will produce, where they are, access. There is a multitude of factors that go into it before you set a rental. Private lands are pretty accessible. You have somebody going up those gravel roads every day. Some of these Federal lands you cannot even get to unless you are on horseback, and that is another cost that has to go into the grazing fees.

So there is the difference. If I take an acre out of Arkansas, maybe I want to give the same price for an acre in southeast Arkansas as I do for an acre in northwest Arkansas. Are they the same? Will they produce the same, just because it is designated a State land? I do not think so.

The same is true out where we live, too.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BURNS. So, from an environmental standpoint, this is an antienvironmental vote if you take everything into consideration, and I ask for its defeat.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. JEFFORDS. Mr. President, I believe the Senator from Arkansas has yielded me time.

The PRESIDING OFFICER. The Senator yields to the Senator from Vermont?

Mr. BUMPERS. I yield such time as he may wish to use.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, this is not the first time we have had these issues raised. I have been here, now—this is my 8th year. I do not know how many times we have had this issue raised.

I remember when I first raised these issues in the early 1990's, I learned a lot about what the situation was in the West. In fact, I even traveled out to Wyoming and met with ranchers and saw the land and examined the situation. At that time there were assurances from those who were out there saying, "Yes, we know we have to raise the grazing fees. We know that they are too low. We know that it is not fair, relative to those who graze on private lands and State lands."

What has happened since that time? Have the rates gone up? Have they made an effort to try to remove the inequities between these beef producers and other beef producers who are grazing on State lands and private lands? No. The fee has gone down, whereas, the private land fees have gone up. The State land fees have gone up; the fees on the Federal lands have gone down.

I also just point out for those who wonder what happened between the time I offered this amendment yesterday and now—I want to thank Senator BUMPERS and Senator DOMENICI for incorporating my second-degree amendment into the original Bumpers amendment—it is that yesterday I had second-degreed the amendment of the Senator from Arkansas. They agreed that my concept of trying to help the small farmers out was a valid one and ought to be adopted. So that was done. So you have now the Bumpers-Jeffords amendment.

Mr. THOMAS. Will the Senator yield?

Mr. JEFFORDS. Yes.

Mr. THOMAS. Does the Senator recognize that under this bill the rate goes up 40 percent, under the bill as Senator DOMENICI presents it?

Mr. JEFFORDS. That may be. But in the interim it has gone down, so you have not gotten to ground zero yet.

Mr. THOMAS. This bill brings it up 40 percent.

Mr. JEFFORDS. But 40 percent of what, though? That is the problem.

Mr. THOMAS. Higher than yours.

Mr. JEFFORDS. But a lot lower than it should have been relative to what it has been, is my point. In fact, mine is low, if you consider that my amendment is to help the small farmers out. So in the sense that you want to help out the small farmer, as I do, then perhaps you would want to vote for this amendment so that you can improve that aspect of the amendment.

I do not have a problem with that, because that is not my problem. My problem is with giving a huge subsidy, which would happen without my amendment, to the corporate entities and the large owners that are going to get a huge benefit without any need or any rationale for it.

The Senator from Arkansas has gone through, and I went through yesterday, the people that are going to be benefited by this. Yesterday, you heard on the floor a great deal about the merits and detractions of the underlying bill. Whether or not we agree on the merits of the bill, I think the majority of this body can agree on the merits of this amendment, which is now included in the amendment you will be voting on, that is, the Bumpers amendment.

My amendment is very simple. It protects 90 percent of the ranchers. So, I do not understand why anyone can disagree with it. Small ranchers, who embody the history of the West, are going to get a benefit better than the underlying bill. But it also rectifies an ongoing injustice relative to the large users of the AUM's.

For 9 percent of the ranchers, the large, wealthy corporate ranchers that consume over 60 percent of the total AUM's—over 60 percent of the total AUM's—who forage on public land, this amendment will simply have them pay the same price—the same price—that they would pay if it were State lands, that the rancher using the rangeland next to them are currently paying to the States. Now, how in the world can that be inequitable, wrong or inappropriate to say that those on Federal lands who are huge corporate owners should not pay the same as they are paying on the State lands?

Organizations who have been calling for sound spending in the balanced budget, such as the Cato Institute—that is a conservative organization—believe it is time to change the fee structure. I was told several years ago, "Yeah, we're going to change the fee structure." The Cato Institute has been promoting grazing fee reform for years, highlighting the need to adjust needs to reflect their true value so you would not have that inequity between those that are grazing on State lands and those that are grazing on private lands and the rest of the beef farmers of this country.

I spoke to this issue yesterday, as did my colleague from Arkansas, quite thoroughly, I might add. I want to reiterate that this amendment not only makes good budget sense, but it makes good common sense. There is no reason why a large rancher on Federal land should be paying up to five times less to use what is basically the same land that his neighbor is grazing just because he is sending his check to Washington instead of to the State capital.

The point has been made that there are a lot of wild animals grazing on this. There are a lot of wild animals grazing on the State lands and a lot of wild animals grazing on the private lands. So there is no inequity to be rationalized out by giving a lower fee on the Federal lands.

But there are other benefits of this amendment I want to discuss today. Farmer protection, land stewardship, and local input.

First, as I mentioned, this bill protects the small rancher by keeping the grazing fee he or she pays low. We are all aware of the plummeting beef prices and the economic hardships facing these ranchers. I firmly believe that we have a responsibility for the success of small ranchers. But I tell you, my dairy producers, they do not get a higher milk price when the price of grain goes up. No way. But they are trying to say now, when the price of the beef goes down, they should allow the price of the rangeland to go down. That does not happen to those on State lands or private lands.

Not only by keeping their fee low for the small farmers, but by raising additional revenue that we could return to the local governments—this money would go back to the local governments for range improvements, most of it—by increasing the fee to the large ranchers, additional revenue will come into the Range Betterment Fund, a program that has helped countless ranchers.

Second, by addressing the large ranchers, this amendment will begin to reduce the significant proportion of the environmental degradation taking place on the public lands. Studies have shown that it is the large ranchers who are causing ecological degradation of the public lands. So the ones we are giving the most benefit to are the ones that are causing the most damage.

Currently, the low Federal grazing fee encourages overstocking on Federal lands, which has been shown to be detrimental to the environment and the grazing lands. A comparison of the size of herds on Federal lands versus the average size on private and State lands shows that Federal lands bear a much higher number of large ranching operations than the other lands. Why? Of course; it is cheaper.

Third, this amendment brings the Federal grazing program closer to the local level. In the past years, on numerous issues, we have heard from

State and local government that they want greater participation in the decisionmaking. This amendment accommodates this request by saying the fee will be at the State level. My amendment will make the system more equitable and make it more responsive to local ranchers.

Yesterday, Senator DOMENICI discussed how one program cannot fit all ranchers. But by leaving the fee schedule as it is in the Domenici bill, we are making one size fit all. This amendment will put more flexibility into the fee system. Large ranchers will be paying what their neighbors on State lands are paying, not what everyone else in the West is paying. As land costs and transportation costs, fee costs and beef prices in the State change, all things will be taken into consideration, and the State fee will change, and the Federal fee for large ranchers will also change.

Again, in summary, let me emphasize how this amendment not only makes good balanced budget sense, but also good environmental and economic sense. Although this amendment is fairly simple in its concept, it builds upon many of the themes in Senator DOMENICI's bill. It protects the small rancher and promotes good land stewardship, and it brings the Federal grazing program closer to the local level. It is time we face this issue. We have been talking about it for years and years and years with promises of review and promises of change and promises otherwise. What has happened? Nothing has happened. The fee is going down again.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THOMAS. Mr. President, I yield 4 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, in my comments here on the floor, I will simply make two points: First, this has been described repeatedly as having something to do with balancing the budget. We are being told how many millions—by implication, billions—of dollars of corporate welfare are going to the huge ranchers because of the Domenici bill. I would like to put that in context, Mr. President.

If the revenue projections of the Secretary's proposed raise in grazing fees are met, which I do not believe they will be, we will generate in increased revenue less money than it took us to put the subway in between the Capitol and the Hart Building. We are not talking about enough money to make any difference whatsoever in terms of the balanced budget circumstance. I repeat, Mr. President, it cost us more to renovate the subway cars running between the Capitol and the Hart Building than the administration will generate in increased fees if their projections are correct.

I do not believe their projections are correct for this very reason. That is a tiny amount of money as far as the Federal Government is concerned. The amount of increased grazing fees is an enormous amount of money for those families who are living, literally, on the edge right now. They will be unable to pay the increased amount called for by the Secretary, so they will go out of business. We will not only not get the increases the Secretary is projecting, we will not get any money at all.

I believe the Federal revenues will go down rather than up if the Domenici position is not maintained. I believe that we will see significant financial damage throughout all parts of the rural West. That is my first point.

My second point, Mr. President, is illustrated with this photograph. Some of you may have seen the pictures that were in full-page ads in the New York Times and the Washington Post and other national publications in which this part of the land was shown in a photograph. The question was asked, whose public lands are they? The implication was that we were getting degradation on the lands. I have heard that again here—degradation on the lands.

Well, I call your attention to the lower photograph. Maybe it is difficult to see across the Senate. It is very clear that the riparian areas in this part of rural Utah are substantially better off in the lower photograph, the more recent photograph, than they were in the first paragraph. What is the difference? The first photograph was taken before grazing was allowed in the area, before the cattle were allowed to get into the area, break up the hard crust of the land with their hooves, allow water to get below the ground surface, allow seeds that were in the air to take root and fertilize the ground with their urine and defecation. We see here lush, lush growth in the riparian area. We see a better environmental circumstance than we saw before the cattle were there.

I wish every Member of this body could have been here last night when the senior Senator from Wyoming [Mr. SIMPSON] had a series of photographs showing 100 years' difference in the State of Wyoming. In every case, the environment was substantially better 100 years later because cattle had been in it.

This is an environmental vote, Mr. President, and the proper environmental vote is to vote with Senator DOMENICI.

Mr. President, I appreciate the leadership shown by my colleague, Senator DOMENICI in bringing this legislation to the floor. I am pleased to join with many of my colleagues in support of this revised and significantly improved legislation.

Grazing of livestock on western Federal lands has been increasingly and unfairly referred to as a subsidized form of welfare. Yet, the western livestock industry is key to preserving the social, economic, and cultural base of rural communities in the West. This lifestyle helped open the West to productive development and responsible stewardship. Grazing is a healthy way to sustain and utilize renewable resources.

We are all familiar with the administration's highly controversial regulations, and the significant impact on the way grazing on public lands are to be managed. I believe these regulations pose a serious threat to the stability of the industry.

The Interior Department's Bureau of Land Management and the Agriculture Departments U.S. Forest Service manage 268 million acres, or 37 percent of the 720 million acres of public and private rangelands in the West. The State of Utah is 69 percent controlled by the Federal Government. We have 22 million acres of BLM lands and an additional 8 million acres of Forest Service lands. Detractors of grazing speak of continued rangeland degradation, yet the professional range managers for these agencies have admitted that Federal rangelands are in the best condition they have been in this century. Great strides have been made in improving the range lands through the use of partnerships and promotion of good stewardship. Furthermore, through shared stewardship with the livestock industry and the general public, populations of wildlife are increasing and stabilizing, and water quality on Federal lands has improved significantly. I believe that S. 1459 will eliminate the controversy caused by the administration's grazing regulations and help mitigate the firestorm they caused in the West.

I am as concerned about the public's right to be part of the planning and decisionmaking process as I am about the bureaucratic quagmire caused by frivolous appeals and protests. Our legislation provides for full public participation in the planning process, allows for protest by affected interests and encourages public involvement through the Resource Advisory Committees and the NEPA process. The general public has the opportunity to comment on actions and site specific NEPA documents, by attending scoping meetings, hearings, and by responding to requests for comments by the agencies.

Since the BLM and U.S. Forest Service offer service to the same list of customers, often from the same building. This legislation would cut bureaucratic redtape and simplify the management of livestock grazing by simply managing all Federal land grazing by the same rules, regardless of jurisdiction. This makes it convenient for the permittee and/or lessee and greatly reduces conflict while reducing the costs of Federal land management.

Grazing is only one of the many uses that occur on Federal lands. This legislation supports and strengthens the concepts of multiple use management, which is basic to the management strategies of both agencies. The privileges of all Americans to access and use these lands is protected. The investments made by the livestock operator in range improvements, which have significantly helped wildlife, are protected. Our legislation seeks to eliminate the on-going clash over water between State and Federal levels by simply recognizing each State's right to allocate and manage water in their jurisdiction.

Mr. President, I believe this legislation provides a vehicle for our professional Federal land managers to join with livestock men and women in managing our Federal rangelands. We can do this while protecting the rights and privileges of all Americans, enhancing wildlife and riparian values and maintaining the viability of the livestock industry in the West. Grazing on Federal lands is economically and socially important in my State and in the West. I encourage my colleagues to support this legislation in the hope that common sense can once again prevail in Federal land management decisions.

I ask unanimous consent to have a summary printed in the RECORD.

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

SUMMARY

State Land grazing fees can be higher because the states are generally not shackled by the regulatory burden carried by Federal Land management agencies.

In some western states, because of the checkerboard effect, state lands are managed by federal land managers by default.

SIZE OF RANGELAND PERMITS, BLM NATIONALLY

	Number of permits	Percent of total permits	Number of AUM's (millions)	Percent of total AUM's
<100 AUM's	8,600	45	1.6	12
>100–500 AUM's	8,600	45	5.5	41
>500 AUM's	1,900	10	6.2	46

Very few of the "large" ranchers (over 2000 aums in Bumpers amendment) are owned by major corporations such as Turner Broadcasting or Prudential. However, many of the family ranches in this category are incorporated for tax purposes, thereby meeting the definition of "corporate ranches."

The majority of these ranches (over 2000 aums) are family owned corporations and most make 100% of their income from federal land grazing.

Because their sole source of income is from federal lands and tend to be heavy indebted, they are probably the most susceptible to even moderate increases in fees.

These ranchers tend to be the best stewards of BLM lands because they live on the land, not in Los Angeles.

These ranches tend to invest heavily in federal land multiple use range improvements and generally have the lowest management costs to the federal land managers.

Bottom line: If they fail, there could be significant ecological changes on federal lands, major range improvements will not occur and costs to the federal government could increase due to the higher cost associated with management of numerous small permits.

Mr. BUMPERS. I yield myself such time as I may consume.

Mr. President, the Senator from Montana a moment ago discussed a large grazing association, individual ranchers, and he said that they would be considered somebody who had more than 2,000 AUM's.

Senator, our bill specifically—specifically—takes care of that. Your association in Montana would be judged according to the AUM's of each individual member, not the association.

No. 2, my good friend from Utah, and I have utmost respect for him, began his statement by saying that we talk about this amendment producing millions and billions in balancing the budget. I have said time and time again the amount of money in this would not wet a whistle. If my amendment passed, it might accidentally produce up to $13 million a year.

But, Senator, I have also said the issue here is not money except in the context of fairness. It is not fair for us to have a law on the books under the guise of helping small ranchers make a living out West, and allowing the biggest corporations in America to slurp up that land and deprive the very people you say you want to defend from grazing permits.

That is the ultimate fairness we are talking about. That is all that my amendment does. My amendment affects less—repeat, less—than 10 percent of the 22,000 permittees in this country. Who are they? Need I repeat it? The biggest corporations in America, slurping up the lands that ought to be used by your small ranchers who need the land, who could make a living on it.

Class warfare? Somebody used that term a moment ago. How foolish can you get? We are not talking about class warfare. We are talking about a basic, elemental fairness. Some day these issues are going to catch on with the American public. Right now, the American public does not have a clue about grazing fees.

I might say they are beginning to hone in on these mining claims. That is getting to be a topic across the country. It has only taken 7 years to raise the voters' awareness slightly on that issue. Not one single State except Nevada will suffer a raise in rates for more than 10 percent of the permittees in that State. Montana and the Dakotas all combined, only 2 percent of their permittees.

I hope that the Senators from Montana and from the Dakotas certainly would vote for my amendment because they would never know it passed out there.

Let me just say, Senator JEFFORDS and I may not prevail, but it will be sort of like my fights with Betty Bumpers. Those I win are just not over. I plead with my colleagues to think very seriously about whether you want to go home, and on those rare occasions when somebody says, "Senator, how did you vote on the grazing fee bill," you will have a good answer. If you vote against this amendment, you are going to have some tall explaining to do. I yield the floor.

Mr. CRAIG. Mr. President, I yield myself 6 minutes.

Mr. President, let me tell the Senator from Arkansas how I am going to vote. I am going to vote against the Senator from Arkansas and his amendment and the amendment that he has modified. In doing that, I will vote for fairness and equity and balance in the sale of a publicly held resource, the public grass of the public land States of this Nation.

What the Senator from Arkansas did not tell you is that he has never asked for a two-tiered rise in the sale of the trees of the Ozark's St. Francis forest. The reason is because he thinks it is fair that the largest timber companies in the world and the smallest man with a sawmill in his backyard ought to pay the same price for trees.

The only thing the Senator from Arkansas has done, and I agree with him, is say the small mill operator ought to be given some advantage through small business set-asides. I think we have agreed with that over the years. But the tree he buys or that Boise Cascade buys is sold on the market at the same price.

Now, when it comes to selling the grass of the public lands, that grass should be sold in a fair way. Those who are buying it ought to be able to purchase it in a fair way. Should we ask that a blade of grass bought by a small rancher be less in value than one bought by a large rancher? No. I think when the Energy and Natural Resources Committee of this Senate—who took it as their responsibility this year to revise grazing law, grazing policy, and we did. I say to the Senator from Arkansas, we heard you. We heard the American people that public land grazing policy ought to be adjusted and changed.

We introduced a bill earlier this year. It was not as pleasing to some as it ought to be. The Senator from New Mexico and I pulled that bill back, along with our colleague from Wyoming and other Western States, reviewed it, and reached out to a variety of public interest groups.

They made 27 different recommendations, and we pooled those recommendations together. The legislation you have before you today does a variety of things, but one thing it does is it raises grazing fees. It puts in place a new formula. It brings about a fairness and equity that every permittee that is a rancher, large or small, who

has grazing on public lands, agrees with, and that is that the fees ought to go up. But what I do not believe in—and I do not think the Senator from Arkansas wants to do it—is to establish class warfare in the selling of public resources for the public good.

We do not say to rich people who go to the U.S. parks, "Oh, I am sorry, you are a millionaire, so you have to pay $2 more to use the campground." Maybe we should. Maybe the Senator from Arkansas ought to propose that. What about the backpacker that pays the fee to enter a wilderness area? Should they pay more if their portfolio says they are a multimillion dollar person? I think not.

We in this country have always spoken to fairness, equity, and reasonable values. But what the Senator has offered is not fair, not equitable, and, in my opinion, it is class warfare. It makes great headlines in the newspapers.

So if it is none of those things, what is it? Why is the Senator asking for this kind of dramatic change from the policy that the committee he serves on has crafted? I do not think it is anything to do about money, and he has admitted that. Whether you charge the big multimillion-dollar ranchers much, much more for the going market rate of grass than you would the smaller—the Senator from Utah said it would not even pay for the subway the Senate purchased a year ago. And if it would not, then what is the issue? The issue is power and control, to get a few more folks off the land so we can have a different image or a different idea as to how the lands ought to be managed. That is what we are really talking about here.

I sincerely believe—coming from a public land State, where ranching is an important part of our economy—that it is good public policy to have a sound grazing policy in our country that says that grass ought to be grazed in a reasonable fashion, that it is a resource of our country that ought to be utilized for the development and the growth of red protein, for the consumption of our country and for the health of our citizens. We have always held that value in this country. What we have done over time is change the way the lands are managed, and that is fair. We should not be managing the grazing lands of the West the way they were managed in 1935, and we are not. The public is telling us today that they ought to be managed differently in 1996 than they were in 1995. Our legislation does that.

So we accept change. We should accept change. But I plead with the Senator from Arkansas to accept fairness and equity. Public resources, whether it is the campground, whether it is the trail, whether it is the log, minerals, or grass, what we are talking about here is that it should be managed responsibly, and it should be marketed in a fair and equitable fashion.

We have never in this country engaged in class warfare, nor should we now, whether it is the sale of public grass, the sale of the public tree, or the public resources. I plead with my colleagues in the Senate to vote down the amendment of the Senator from Arkansas.

Mr. CAMPBELL. Mr. President, raising the grazing fees under the Bumpers amendment is fundamentally unfair to ranchers. This proposal does not fully consider the investments that ranchers already have made in building their lots.

In addition, the profit margins for many ranchers is small, and many ranchers already have fallen into bankruptcy. Raising the fees as this amendment proposes to do will make things even more difficult for ranchers and may force more ranchers to exit the business during the next few years.

Mr. President, a look at the increasing losses suffered by ranchers paints a bleak picture. In the business of ranching, analysts consider the industry average for the "estimated calf break-even" prices in tracking trends.

In the industry, we refer to the "calf break-even price" to mean the cost of supporting a cow to produce a calf for a year divided by the weight of the calf. There are many costs associated with supporting cows, such as summer pasture, winter feed, breeding costs, health costs, veterinary visits, and medications. Producers in the northern regions, including my home State of Colorado, have even higher winter feed costs and have to pay more out-of-pocket expenses for the winter.

In the fall of 1993, the estimated industry average calf break-even price was $81.95 per 100 weight. The average profit was $42 per head.

Since then, however, the industry average shows increasing losses.

In 1994, the break-even price was $80.78 per 100 weight, but there was a $12 per head loss.

In 1995, the break-even price was $80.41 per 100 weight, but the losses increased to an average of $59 per head.

For 1996, industry analysts already are predicting another year of losses which will be even to or greater than the losses incurred in 1995.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a table which shows the industry average for the "estimated calf break-even" prices and the average losses sustained by the producers. I also ask unanimous consent to have printed a second table in the RECORD which reflects the average sale price and profit or loss per hundred weight.

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

TABLE 1—COW/CALF PRODUCER PROFITABILITY

[Industry average for costs versus returns]

Year	Estimated [1]	Profit/loss (per head)
1993	$81.95	[2] $42
1994	80.78	[3] 12
1995	80.41	[3] 59
1996	TDB	([4])

[1] Estimated calf break-even prices (per 100 weight).
[2] Profit.
[3] Loss.
[4] Projected loss is even to or greater than less in 1995.

TABLE 2—COW/CALF PRODUCER PROFITABILITY

[Industry average sale price and profit/loss per hundred weight]

Year	Est. calf break-even (per 100 weight)	Avg. sale price (per 100 weight)	Profit/loss (per 100 weight)
1993	$81.95	$94.50	+$12.55
1994	80.78	78.36	−2.42
1995	80.41	63.43	−16.98
1996	TBD	TDB	([1])

[1] Projected loss is even to or greater than loss in 1995.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

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

The PRESIDING OFFICER. Five minutes, 25 seconds.

Mr. BUMPERS. Mr. President, I yield to my distinguished colleague, Senator JEFFORDS, 2 minutes.

Mr. JEFFORDS. Mr. President, if you only listened to the facts right now, you would come out with completely different conclusions than you would from the positions people have been taking here. Let us remind ourselves, as far as this class warfare argument, just yesterday all of my friends voted in favor of the product liability bill, which has quite a different situation for small and big business. Why? Because small business obviously gets a greater hit, with a smaller amount of money. Well, the measure we are dealing with now will have a fee lower for the small farmers, the small users. All your small farmers—the only ones you are going to benefit, or the only ones my friends arguing so strongly against me are going to benefit, are the large corporate guys, the ones that do not need any help, the ones getting a benefit far above what the present price is for State lands, which we would charge them for private lands.

So why in the world do my colleagues, who want to give all their smaller farmers a lower rate, want to vote against the amendment that would do that, when it only charges the wealthy and huge corporate ranchers the same as they pay on State lands? It does not make any sense at all. I do not understand it. It is just because we are so used to taking positions on one side or the other, and you cannot recognize when we are doing something to benefit you. It is purely to establish a system of equity and sense in the fee system.

I urge all my colleagues to vote for the Bumpers-Jeffords amendment. I yield the remainder of my time.

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

Mr. DOMENICI. How much time remains?

The PRESIDING OFFICER. The Senator from Arkansas has 3 minutes, 30 seconds. The Senator from New Mexico has 1 minute.

Mr. BUMPERS. Mr. President, the Senator from Idaho raised a question about timber. I do not understand the relevance of it. We do set aside timber for small business people. Even so, timber is sold on a competitive basis.

If you want to start leasing 270 million acres of public rangelands for grazing on a competitive basis, I may or may not vote for that, but we do not do that. Do you know how you get a permit? You have to own land. Hewlett-Packard may own 400 acres of land, which they have to do in order to be eligible for a permit. If they have a 400-acre ranch that they own themselves, they can run cattle on 100,000 acres of Federal land.

I am telling you something else. You could not pry these permits from permittees with a wedge. They literally hand these permits down from generation to generation. Under the current regulations, the term of a permit is 12 years. The Senator from New Mexico, his bill originally considered 15 years—is it 15 or 12 now?

Mr. DOMENICI. I believe it is 12.

Mr. BUMPERS. Twelve years is a long time. You cannot compare timber sales, which are let competitively, to a permit which you give some corporation like Anheuser-Busch or Hewlett-Packard, simply because they own a few hundred acres in their own right, give them 50,000 to 100,000 acres to raise cattle on for $1.35 a month per cow.

Everybody here knows what this is—corporate welfare, pure and simple, just like the Market Promotion Program where we give McDonald's money to advertise the Big Mac in Moscow. That is more of the same. Here we are trying to make just a small dent and say that these big corporations who own 60 percent of this 270 million acres pay at least what the State would charge you if you were renting lands from the State.

Why is it that the Government only receives $1.35, and that is way under what any State in the Nation charges for the same thing? It is politics. It is corporate welfare. And it is grossly unfair. I plead with my colleagues to come in here and search their consciences about whether this is right or wrong.

Should we allow this practice to continue? As I say, these things are so patently unfair. They never go away, Senators. They never go away. Let us address it now. If my amendment is not perfect, we will go to conference and make it perfect.

My fee is actually less than the fee of the Senator from New Mexico in the year 2005. We are not talking about what we are charging the small ranchers; we are talking about what Hewlett-Packard, Newmont Mining, Anheuser-Busch, and the biggest corporations in America ought to pay.

The PRESIDING OFFICER. The time of the Senator has expired.

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

The PRESIDING OFFICER. One minute.

Mr. DOMENICI. I wonder if I could get 1 additional minute. Does Senator BUMPERS object?

Mr. BUMPERS. Not at all.

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

Mr. DOMENICI. Mr. President, I want to give two reasons why you should vote against Senator BUMPERS' amendment. First of all, let me suggest that if this were an issue of politics, if this were an issue of how many people are ranchers and cowboys in the State of New Mexico versus those that are not, the politics would be to vote for the Bumpers amendment and put all the small ranchers in New Mexico out of business because there are not very many of them. This argument about the big corporate users—I am not here trying to protect them. They will protect themselves. I am here to protect the small guy.

Let me tell you, in Arizona, New Mexico, parts of California, and in other States, this amendment that is pending will say to ranchers with 176 animal units who use it year long, "You are a big rancher, and you pay up to $10 in some States, and you are out of business." That is what this amendment will do. For another huge portion of them, 354 head will qualify as being large under that amendment that we are debating. They are not big ranchers. They will go broke under this formula.

And last, my second point, Senator BINGAMAN, who has been working on this for a long time, has a bill, and what do you think his fee schedule is? His fee schedule is exactly the same as that in the Domenici bill. I think he has looked at it. He does not agree with everything that we are for, but he does agree that the fee schedule that is being sought by Senator BUMPERS is outrageously high for many, many ranchers in the United States. And if you want them to quit, fold up their tents and go home, vote for the amendment that the Senator from Arkansas has before us.

Mr. BUMPERS. Mr. President, I ask unanimous consent to be granted 30 seconds.

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

Mr. BUMPERS. Mr. President, Karl Hess, Jr., a senior fellow at the Cato Institute—that is not exactly the citadel of liberalism down here—says:

> Domenici's bill is bad for ranchers, bad for public lands, and bad for the American taxpayer. It will not improve management of public lands and it will not be a fix for the hard economic times now faced by ranchers. What it will do, however, is deepen the fiscal crisis of the public land grazing program by plunging it into an ever-deepening deficit. If western ranchers insist on supporting this bill and the additional costs associated with it, they should be prepared to pay the price.

The PRESIDING OFFICER. The time has expired.

Mr. DOMENICI. Mr. President, I move to table the Bumpers amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from New Mexico to lay on the table the amendment, as modified, of the Senator from Arkansas. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] is necessarily absent.

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

The result was announced—yeas 52, nays 47, as follows:

[Rollcall Vote No. 48 Leg.]

YEAS—52

Abraham	Dole	Kempthorne
Ashcroft	Domenici	Kyl
Baucus	Dorgan	Lott
Bennett	Faircloth	Lugar
Bingaman	Feinstein	Mack
Bond	Ford	McCain
Breaux	Frist	McConnell
Brown	Gorton	Murkowski
Bryan	Gramm	Nickles
Burns	Grams	Pressler
Campbell	Grassley	Reid
Coats	Hatch	Shelby
Cochran	Hatfield	Simpson
Conrad	Heflin	Stevens
Coverdell	Helms	Thomas
Craig	Hutchison	Thurmond
D'Amato	Inhofe	
Daschle	Kassebaum	

NAYS—47

Akaka	Hollings	Pell
Biden	Inouye	Pryor
Boxer	Jeffords	Robb
Bradley	Johnston	Rockefeller
Bumpers	Kennedy	Roth
Byrd	Kerry	Santorum
Chafee	Kohl	Sarbanes
Cohen	Lautenberg	Simon
DeWine	Leahy	Smith
Dodd	Levin	Snowe
Exon	Lieberman	Specter
Feingold	Mikulski	Thompson
Glenn	Moseley-Braun	Warner
Graham	Moynihan	Wellstone
Gregg	Murray	Wyden
Harkin	Nunn	

NOT VOTING—1

Kerrey

So the motion to lay on the table the amendment (No. 3556), as modified, was agreed to.

PRIVILEGE OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent Amy Lueders, a congressional fellow, be accorded the privilege of the floor.

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

Mr. BINGAMAN. I also ask unanimous consent that Philip Kosmacki, who is a fellow in Senator WELLSTONE's office, be granted the privilege of the floor for the remainder of the debate and voting on S. 1459.

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

The Senator from New Mexico.

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

The PRESIDING OFFICER. The Senate will be in order.

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

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, Senator BINGAMAN is to be recognized for an amendment; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. DOMENICI. Might I say, from the Republican side, there are no time limitations on this amendment. I do not believe we want to speak a long time on it. There are a lot of Senators who would like to get some votes behind them here today. I am going to do everything I can to accommodate, without jeopardizing Senator BINGAMAN and those who support him having their opportunities to speak on the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3559 TO AMENDMENT NO. 3555

(Purpose: An amendment in the nature of a substitute to the Domenici substitute to S. 1459, the Public Rangelands Improvement Act of 1995)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] for himself, Mr. DORGAN, Mr. REID, Mr. BRYAN, and Mr. DASCHLE, proposes an amendment numbered 3559 to amendment No. 3555.

Mr. BINGAMAN. 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:

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BINGAMAN. Mr. President, this is a substitute amendment I am offering on behalf of myself, Senator DORGAN, Senator REID, Senator BRYAN, and Senator DASCHLE. I know there will be at least three other Senators who wish to speak in favor of this substitute.

Mr. President, there are some basic differences between the bill as proposed, Senate bill 1459, and the substitute that I have just sent to the desk and which we are going to vote on here at some point. Senate bill 1459 deals with BLM land and Forest Service land.

Let me just say generally what I believe it does in regard to each of those. On BLM land, it repeals all the existing regulations the Department of the Interior has in place with regard to grazing on BLM land. It would also put in statutory form a significant amount of the policy that has previously been handled by regulation in the Department of the Interior with regard to BLM land, grazing on BLM land.

Then it states that with regard to any subject that is not covered by this new statute, Senate bill 1459, it would reinstate the old regulations which were developed during James Watts' administration in the early 1980's and which have been in place since that time. So that is what it does on BLM land.

On Forest Service land, it changes the statutory law that the Forest Service has operated under for grazing in our national forests for at least 60 years. It changes it in a way that, in my view at least, encourages more use of the national forest for grazing rather than less use of the national forest for grazing. That is the underlying bill, Senate bill 1459.

The substitute I and my colleagues have offered here has a very different purpose. Its purpose is to identify the portions of the new BLM regulations that have raised legitimate concerns among people who are affected by them, and it proposes that we legislate new statutory policy in those areas. The goal of the amendment is to ensure that the public maintains adequate input into the process of policymaking on our public lands, ensure that land managers have adequate authority to maintain the health of our public lands and, of course, maintain the use of our public lands for all of our citizens.

The substitute that I want to address here works to accomplish these goals. I believe it will provide real stability for permittees and lessees as well. In some detail, I would like to describe, first, what the substitute does and then some of the things that it clearly does not do.

First of all, what the substitute does. I have a chart here, Mr. President, that tries to identify the key policy changes contained in this substitute and the issues we have tried to address. As I said before, what we have tried to do is listen to the concerns of people who are permittees and lessees, listen to the concerns of others who have need to use the land or desire to use the public land, and put in statute those things we believe need to be statutorily provided for because they are not adequately covered by existing regulations.

We otherwise leave in place the existing regulations on the BLM land, and, of course, we do not apply most of this bill—all but three provisions of this bill do not apply to the Forest Service. We allow the Forest Service to continue to administer the lands under the existing law that they have in place.

The first thing we have changed is that we provided that "interested publics," as described in the existing regulations of the Department of the Interior, are replaced by a definition of "affected interests." Now, what does this mean?

One of the complaints we heard from ranchers about these new Department of the Interior regulations was that those regulations expanded the group of people who were entitled to be consulted or notified about grazing decisions. The old regulations provided that, in order to be notified, you had to be a so-called affected interest, as determined by the Bureau of Land Management.

Under the new regulations, anyone who is part of the interested public—that is the phrase that is used in the new regulations; the "interested public"—anyone who is part of the interested public has a right to be notified.

In our view, this was a legitimate concern by ranchers. They did not believe that anybody who just had an interest should be given equal standing to be notified. What we have done in this substitute is return to the old language in the old regulation instead of the broader definition of an "interested public." We believe that that is an appropriate change in the law that responds to a legitimate concern that was raised and brought to our attention.

The second item here is regarding NEPA, the National Environmental Policy Act. A concern was raised, again by permittees and lessees, that the application of NEPA had become so pervasive by the land management agencies that many of the actions and decisions which the permittees and, in fact, the agencies considered to be fairly routine and not posing any threat to the environment, they were being required to go through long procedures under NEPA, and it was slowing down the process of getting a response from the agencies.

Let me point out that this is not something you can blame on Secretary Babbitt. There is a lot of criticism of Secretary Babbitt from many corners here in this debate. But he cannot be blamed for this. Neither can Dan Glickman, our Secretary of Agriculture. This requirement that applies NEPA to all of these different activities applied

before those two individuals ever came into office. It is not the result of regulations that have been adopted; it is the result of the law that we in the Congress passed.

The question is, how do we deal with the problem? Senate bill 1459 tries to deal with the problem of NEPA application to all of these routine activities by essentially saying that NEPA only applies in the preparation of a land use plan and saying that, after that, any action or decision related to grazing is not covered by NEPA and therefore NEPA does not have to be complied with with regard to those other items.

In our view, that exemption is too broad. We propose a much more limited exception for NEPA. We say that renewal and transfer of grazing permits, and only the renewal and transfer of grazing permits or leases, can be done without complying with NEPA; that that can only happen where it is determined by the Secretary that the renewal or transfer will not involve significant changes in management practice or use and that significant environmental damage is not occurring or imminent. But where he can determine there is no significant change in management practice or use and no significant damage is imminent, then clearly he can go ahead and renew a lease or transfer a lease or a permit without complying with NEPA.

We have done one other thing, Mr. President, with regard to NEPA. That is, we have included in the substitute a provision that directs both the head of the BLM and the head of the Forest Service to prepare a list of NEPA so-called categorical exclusions for nonsignificant grazing activities. The effect of having categorical exclusions for nonsignificant grazing activities will be to expedite the process. This is not a new loophole or a change in NEPA; it is a clear congressional direction that they should, under NEPA as it now exists, go ahead and use these categorical exclusions.

In our view, this is a much more limited and targeted way to deal with the problem of routine concerns that are not involving significant damage to the environment. It addresses the specific problem. It does not blow a major hole in the application of NEPA to everything that relates to grazing except that at the land-use-plan level.

The next item I want to mention is that in our substitute we reinstate grazing advisory boards. Again, Mr. President, this is a change in the existing regulations. The new regulations that were adopted this last year eliminated grazing advisory boards. They became, essentially, defunct. They had not been appointed, and the Secretary did not reestablish those in the new regulations. We have done what I believe the underlying bill does, and that is to provide for the reestablishment of these grazing advisory boards.

In my view, it is appropriate to do so because they would provide a significant forum that ranchers, permittees, and lessees could use to have input. Half of the membership is to be made up of permittees and lessees, and half to be made up of other local individuals chosen by the Secretary.

Another change that we have adopted in this substitute, another provision, is that we do adopt the grazing fee formula that is in S. 1459, but we have put in a stabilizing provision. We have put in a minimum fee of $1.50 per animal unit month. This would involve some slight increase from $1.35, which is what the formula now results in, to $1.50 per month. Then the fee would go ahead and be whatever fee was higher than that, if the new fee that Senator DOMENICI devised would call for that.

Quite frankly, I do not know if that is the exact right level of the fee. I do not think that the main issue here is how much money can be obtained from people for use of this land. I think that is a very secondary issue. The main issue here is what laws do we put in place to preserve the health of the rangeland.

The next provision deals with indirect control. The indirect control provision is removed from the affiliate provisions. This is a fairly arcane item. The concern here is that looking at renewals, permittees were being held accountable for actions of people who were not under their control. That was the concern that was brought to us.

To the extent that problem exists, we have corrected it in our substitute. The new regulations that are in place can look at actions of persons under the indirect control of the permittee. Our substitute bill makes it clear that the BLM could only consider the actions of the permittee and persons under that permittee's direct control in deciding whether or not to renew that lease or that permit. That is a very small item that was called to our attention and seemed legitimate.

The next item is the surcharge exemption. In cases where subleasing is occurring, the new regulations provide an exemption from any surcharge only for sons and daughters of the permittee or the lessee. We heard the complaint from permittees and lessees that that was too narrow a provision, that there should be an exemption from surcharges for other immediate family members, as well. So we have put a provision in saying that the surcharge exemption should be expanded to include a spouse, a child, or a grandchild. Again, we have proposed a specific solution to a specific concern that was drawn to our attention or brought to our attention.

The next item on our list is for fallback standards and guidelines. The substitute that we are proposing does not require any minimum national standard or guideline. Instead, the Secretary, in consultation with the resource advisory councils, the grazing advisory boards, appropriate State and local government and educational institutions, and after providing an opportunity for public participation, will establish statewide or regional standards and guidelines. We believe that is more acceptable to many of the people involved. That seemed like a reasonable resolution of that problem from our perspective.

The final item I have is the resource advisory councils and the grazing advisory boards are to be involved in developing criteria and standards for conservation use and temporary nonuse. Our substitute expressly provides for conservation use. That is a major difference between our bill and the underlying bill.

The resource advisory councils and grazing advisory boards should be consulted when the Secretary develops criteria and standards. Conservation use can be conducted if the agency approves the use, because it is necessary to promote rangeland resource protection, and the use is consistent with the land use plan. A permittee under our proposal does not need to be engaged in the livestock business to practice conservation use.

When I spoke yesterday about the underlying bill and read the letter from the Nature Conservancy where they expressed their concern about this in the underlying bill, the substitute makes it clear that they do not need to pass a test, a threshold test, of being in the livestock business in order to attain a permit and engage in conservation use.

Now, what we have done is to leave the decision to the land management agency as to whether or not to permit or to allow a permit to be transferred to a person who wants to use it for a conservation use. In my view, that discretion is appropriate. It is important this issue is resolved both for the permittees and the lessees who reside in our States.

The underlying bill authorizes coordinated resource management agreements which could be, presumably, used for conservation purposes. It appears that under the underlying bill, a rancher could agree to enter into a conservation agreement with other groups, but those groups—groups such as the Nature Conservancy—cannot by themselves hold a permit and enter into a conservation use. We try to correct that problem.

Mr. President, this is a fairly good description or a fairly complete description of what is in our bill and a summary of the problems that were brought to our attention as a result of the new regulations of the Department of the Interior. We did solicit concerns from permittees and lessees and others who had problems. With the exception of these provisions, we do allow those regulations to remain in place.

We had several speeches on the floor yesterday about how both the Department of the Interior through BLM and the Department of Agriculture through the Forest Service were, in the view of some, trying to run the ranchers off the land; they were trying to end this way of life that the cowboy has had historically in the West. I have heard those speeches, Mr. President. I have heard them now for several years. I just need to say for all my colleagues to hear that I do not think that reflects the reality that I see in my home State.

I do not dispute that there have been instances where one or both of those agencies have overstepped, or where permittees and lessees have been unfairly treated, but I also do not dispute that there are some provisions in the existing regulations of the Department of Interior that should be changed. We have tried to change those in this proposed substitute.

I want all of my colleagues to know that what we are trying to do in the substitute is to correct specific problems that have been pointed out to us. We are not trying to create new problems. It is a very difficult balance that is required between those who graze on the land and those who want to use the land for other purposes. I believe the agencies themselves have been trying to find that balance, sometimes ineffectively, but they have been trying to.

I believe Senate bill 1459 will bring imbalance to this relationship. For that reason, I do not support it. I think our substitute is preferable. I will briefly recite the concerns I have with S. 1459 later in the debate, Mr. President.

I see I have a colleague here from North Dakota anxious to speak. I yield the floor.

Mr. DORGAN. Mr. President, I commend the Senator from New Mexico, [Senator BINGAMAN]. I want to follow his statement with some observations of my own about the substitute that he offers with myself and others today on this issue.

I view this issue not only from a national perspective, but also, especially, from the perspective of western North Dakota. That is where I was raised, where I grew up. It includes the grasslands and badlands and a lot of wonderful territory. I have, when I was younger, ridden a horse with my father through most of the badlands and much of western North Dakota. I have spent a lot of time on horseback, riding across those wonderful tracts of land. I do not have any interest, in any way, in injuring the scenic value, in interrupting the multiple use, or in preventing the American public, who owns much of this land in western North Dakota, from having full access to and full use of the land.

But I also know from having been there, especially when I was younger with my father, and since then as a public official, I have been there visiting ranches and going to meetings with ranchers and others. I also know there are a lot of people who live out in western North Dakota, who make their living out on a family ranch, who invest a little money, maybe raise some cattle, do not quite know what the price will be when they get to the point where they are going to sell cattle. They have an enormous risk. They rent some land to graze on. They pay a grazing fee to the Federal Government and run some cattle on that land. Most of them have an interest in treating that land well. They understand that stewardship. Most of them are environmentalists, in my judgment. Most of them care about wildlife and care about the shape that land is in.

I thought it would be interesting to read for my colleagues a letter from Merle Jost, from Grassy Butte, ND, because there is a lot of hyperbole about these issues. People stand up and wave their arms and talk about the Bingaman substitute, the Domenici bill, or this or that, or the other approach will destroy wildlife, destroy hunting, destroy the scenic beauty. I have heard all of these things. I have some feelings about what we ought to do and ought not to do today. But I want to say to you that on behalf of a lot of people out in my part of the country, who are trying to make a living and do a good job and be good stewards of the land, they also care about the same things that many of us care about in here, that stand up and talk about wildlife. Here is a letter from Merle Jost:

> As I write this letter, the deer are sneaking into the bird feeder—guess I'll have to put out more sunflower seeds.
>
> There goes another bunch—after the pheasant food—more of that. There goes a flock of sharptales—to dine on my oat bales.
>
> The antelope are in the alfalfa field again. Oh, well, spring coming; they will soon scatter. My neighbor to the north is feeding 200 turkeys these days. He deserves a medal—turkeys are hell.
>
> My neighbor to the east has 30 deer a night—eating ground feed out of his augers.

I see a lot of press conferences screaming about ranchers wrecking this and that or destroying this and that. He said, "We support wildlife." He is right. Anybody that knows much about ranching could exist with the wildlife in western North Dakota. This is an issue for a lot of people, an issue for ranchers. It is an issue for people who also want to use that public land for hiking, for hunting, for a whole range of issues. That land will be, and ought to be, open to multiple uses.

We are here because, especially in my part of the country, ranchers who are involved in the use of that land for grazing purposes—that is one of the uses—have had some difficulty with respect to the management of that land. Let me give you an example. One permittee, the McKenzie County Grazing Association, has been denied a permit for a dozen years to construct a crossfence along a pipeline corridor in this allotment. He was going to construct it at his expense. A dozen years, no permit. The Forest Service agrees that the fence would improve the range conditions. But only now, after pressure from the association, are they going through the scoping process.

Another permittee is unable to construct a water pipeline into a crested wheat-grass area, which the Forest Service also agrees would result in better range conditions. Why? Because, after 3½ years, the Forest Service has not been able to do a biological survey. It is not that somebody says it is not a good idea. It is a good idea and ought to be done. But the landlord is not able to do the survey, does not have the money, does not, apparently, have the will, or is not interested in the speed to do a survey. So 3½ years later, something that probably ought to be done, and will be done at the expense of the rancher on public lands, is not even started. Ranchers say, "Wait a second, why can we not get answers and have better stewardship on the part of the managers of this land?" It is a reasonable request.

When those of us who evaluate these things look over these kinds of complaints—I have concluded that we ought to respond to them. There ought to be a better management scheme and management system on these public lands so that in those areas where we have grazing use, those who are grazing these lands, if they need to have a water pipe come in, or have a water tank moved, or construct a fence someplace, you ought not have to wait 18 months or 12 years for answers about that. That is what this is about. It is not about anything more than that.

I have seen editorials in the last couple of days that talk about this is a land grab, and that this is giving public property to the ranchers, this is turning the keys over to the ranchers, it is trying to disrupt multiple use, and it means turning our back on wildlife. That is not the case.

Now, we have before us a couple of choices today. One is the Bingaman-Dorgan substitute, which we now offer on the floor of the Senate. The other is the underlying Domenici bill. Let me say this about the Domenici bill. It has changed some, and I think along the way it has been improved some. I think it could be and should be improved more. But the fact is, it has moved. This has been a process over a series of months where there have been a series of changes. The Bingaman substitute, which we offer, I think, is a better solution. They are, in fact, almost identical with respect to title II. The substantial differences in the substitute are in title I. Let me go through a couple of points with respect to the substitute and why I think it is a better approach.

First of all, it is a better way to construct law. It is a shorter piece of legislation. The Domenici bill started with the proposition they were going to—I said in the committee that the Domenici bill is really a letter to Secretary Babbitt. There is a better way to write to him than to write 95 pages of codifications of regulations. I do not think you ought to codify regulations in law. I respect the fact that there are some problems with the Babbitt regulations. What Senator BINGAMAN and I are trying to do is determine, with the ranchers and others, what are the problems, and then address the solutions to the problem. That is the best way to legislate. That is what the substitute does.

We, I think, come to a better conclusion and a more appropriate conclusion on the issue of public participation. These are, and will be, multiple-use lands. Hunters have a right to these lands; hikers have a right to these lands; and a myriad of other users have a right to these properties, and that will remain the circumstances under the legislation we have proposed. They will remain in a situation where they will have access to these decisions, and they will be consulted as affected interests on the major decisions, and the significant decisions about the use of these lands.

We also recognize that we are addressing some language in this legislation to respond to real problems ranchers face. We do this, as Senator BINGAMAN said appropriately, in a manner designed to solve problems, not create new problems. I think that our approach is an approach that addresses legitimately the problems that ranchers have described to us—and they are real problems—but doing it in a way that does not cause additional problems and does not diminish the opportunities of other multiple users to use this property.

One of the issues that we were at odds about, which was never resolved in a whole series of negotiations we had, was the issue of conservation use. I firmly believe that conservation use ought to be available. If an organization such as The Nature Conservancy wants to have a permit on 500 acres in North Dakota for its own reasons and has decided it does not want to graze cattle on that, I think that ought to be allowed. It is explicitly prohibited in the underlying Domenici substitute. That is one of the areas we were simply never able to resolve.

Would I want there to be a circumstance where someone came in and said they were going to take all of that grassland in western North Dakota and make it conservation use and graze nothing on it? No, I would not want that. The fact is that too much of western North Dakota is already becoming a wilderness area without a designation because too many people are leaving. We need more people coming to our part of the country. My home county, which is in western North Dakota, has lost 20 percent of its population in the last 15 years.

So, would I think it is appropriate for us to have a circumstance where an organization comes in and tries to buy it all up and says, "By the way, we bought it for the purpose of deciding not to graze it"? No; I would not support that. But do I, on the other hand, believe that we ought to expressly prohibit someone from taking a small tract of land for the purpose of trying to nurture some specific kind of wildlife and then say to them that they cannot get a permit and decide not to graze that? I do not think that is appropriate either. We have had circumstances, even in our State, where it has been to the benefit of all of the surrounding ranchers that a conservation use on a small acreage has helped all of the other surrounding ranchers who are grazing other acreage, with respect to wildlife production.

So I think the expressed prohibition in the Domenici bill is inadvisable.

In the substitute that Senator BINGAMAN and I have offered, in title II, we incorporate a portion of title I which deals with a conditional NEPA exemption for permit renewal and transfers. We think that makes sense. We think what you ought to do is invoke NEPA when you have significant actions. We think that when you have insignificant actions, such as a permit transfer renewal, which is not a significant action and which would not affect the condition or circumstances of that land, we think that NEPA should not be traded.

So those are the kinds of things that we have included in this substitute. I have mentioned three of them. But there are about 10 that make this substitute a much more advisable piece of legislation for this Senate to enact.

I feel very strongly that the kinds of things we have done in this substitute are the kinds of initiatives that are designed to address the problems that have been brought to us by ranchers, but to address the problems in a way that does not cause other problems or does not restrict in any unfair way others who want access to and have every right to have access to this property.

Let me conclude, without going through all of the details of the substitute because I think Senator BINGAMAN has done an excellent job of that, by ending where I began.

I would not come to the floor of the Senate supporting any initiative under any condition if I felt it was an attempt by anybody to grab land for one specific interest in western North Dakota. These lands are owned by the public. The public has a right for multiple use of these properties. That right shall remain. But I also understand, having grown up there, that this land has been populated for many, many years by a lot of families out there struggling to make a living raising cattle. One use of this land has been grazing, and the circumstances under which this land has been managed have in some cases been acceptable but in other cases been deficient. Both of us, Senator BINGAMAN and I, as well as Senator DOMENICI, are offering initiatives today to say we would like to address those problems. We address them in different ways. I think ours is preferable to Senator DOMENICI's. I say that, at the end of the day, I hope the Senate will have spoken in a way that says these are real problems, here is a solution that is appropriate and is a satisfactory solution that solves the problems without creating additional problems.

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

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The distinguished Senator from New Mexico is recognized.

Mr. DOMENICI. Might I ask Senator BINGAMAN if he has any idea of how many more speakers he might have?

Mr. BINGAMAN. Mr. President, in response, I know that Senator DASCHLE wanted to speak for a very short period, and I know that Senator REID asked to be allowed to speak for up to 45 minutes. Senator REID had a meeting at 3, and he will get here as quickly as he can. We just sent word to see if Senator DASCHLE is able to speak now.

Those are the only two that I am aware of that want to speak. There may be others.

Mr. DOMENICI. Did the Senator indicate that Senator DASCHLE would like to speak now?

Mr. BINGAMAN. I indicated that we are trying to check to see when he wants to speak.

Mr. DOMENICI. We do not need very much time at this point.

Does the Senator from Idaho want to speak to the water issue? Could he take a short amount of time in his succinct way to address this important issue?

Mr. CRAIG. No more than 5 minutes.

Mr. DOMENICI. I yield 5 minutes to the distinguished Senator, Senator CRAIG.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. I thank my colleague for yielding.

Mr. President, I will be succinct. But I do think that we have a great concern about Senator BINGAMAN's substitute and how he deals with water. It is very clear in our legislation that the States have primacy in all water issues and that the Federal Government must comply with State water law. We know that Congress after Congress has affirmed this very position. In the Democrat substitute that Senator BINGAMAN has offered, it declares that new water rights shall be acquired, perfected, maintained, and administered in connection with all livestock grazing in accordance with State law.

The key word here is "new" water rights. The Democrat substitute makes no provision against the extortion of water rights as a condition to grant a grazing permit or leased range improvements, cooperative agreements, or range improvement permits as provided in the Republican substitute, nor does the Democrat substitute require that the Secretary follow State law with regard to water rights ownership and appropriation as provided in the Republican substitute. Both substitutes protect valid existing water rights, but the operative word here is "new." Let me repeat, "new" water rights.

What about all water rights? What about existing water rights? Does anyone seriously believe that this Secretary of the Interior, who I think helped write this legislation, is not concerned about water and trying to grab back as much water as he can off the lands where valid and existing water rights have already existed?

In the 1995 appropriation act, the Secretary of the Interior tried directly to assert Federal ownership and control over all water rights on Federal lands. This time he plans to do it indirectly through this kind of legislation by talking about dealing only with new water rights and leaving it up to his solicitor to interpret the language of excluding all existing water rights.

Mr. President, this is a concern that I hope, if my interpretation of it is wrong, the Senator from New Mexico, the junior Senator, will correct. We know where Secretary Babbitt is. He is very clear, and he has even sidestepped NEPA and the ESA to stage a media event with his friends and special interests in the Grand Canyon with an artificial flood event that could jeopardize important ruins, threaten endangered species, and jeopardize blue ribbon trout fisheries.

I say this in all sincerity. I hope that the junior Senator from New Mexico could clarify for me because it is very important that we stay within State law on this water issue; that we stay with "existing and new water rights." I believe his legislation speaks only to "new," and that must be clarified. I hope he can do that.

I yield back the remainder of my time.

Mr. BINGAMAN. Mr. President, let me just respond to the questions because I think what has been raised is a classic red herring. In the West, many more people have been killed for water than for infidelity to their spouse, and I think this is obviously a hot button issue. We have provided as explicitly and as clearly as we can understand the English language that valid existing water rights are protected. We say on page 11, line 14, "Valid Existing Water Rights." That is the title of the sentence, or the section. It says, "Nothing in this title shall be construed as affecting valid existing water rights." Period.

I do not know how to make it any clearer than that.

In the previous sentence, we say, "No Federal reserved water rights." We say, "Nothing in this title shall be construed as creating an express or implied reservation of water rights in the United States."

So we have covered the exact concern that the Senator from Idaho is raising.

In the previous sentence we say:

> New water rights shall be acquired, perfected, maintained, or administered in connection with livestock grazing on public lands in accordance with State law.

That is appropriate. Clearly that is what we intended the law to be. And we have covered valid existing rights in section (c) of that same section. I do not understand what the issue can be. If there is a more plain-English way to say that valid existing water rights are not affected than to say "nothing in this title shall be construed as affecting valid existing water rights," I would like to hear it.

Mr. CRAIG. Will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. CRAIG. If the Senator had said "all" water rights, I would agree with him. The Senator did not. His amendment explicitly singles out "new" water rights. It is very important that we have that understood for the record, and it is important, I think, if we are to protect these State rights and individual rights, that language comply with the bill of the senior Senator from New Mexico because it clearly sets out that whole issue.

Is there a reason for a singling out of "new" versus the interpretation of, and excluding all existing rights?

Mr. BINGAMAN. Mr. President, what I said before was that we have the section, section 112, broken down into three subsections. The first section deals with new water rights. The second section deals with Federal reserved water rights. The third section deals with existing water rights. So we have covered all three. I do not understand what the problem is. We have covered existing water rights in section (c). We have covered new water rights in section (a). We have covered Federal reserved water rights in section (b). What is the problem?

Mr. CRAIG. It is this Senator's opinion that by selectively singling out "new" water rights, you leave open to opinion by a very unfriendly solicitor and by a very unfriendly State water rights Secretary this issue. I think the question must be closed or you place those water rights in jeopardy.

Mr. BINGAMAN. Obviously, differences of opinion are what makes for horse races, Mr. President, and the Senator from Idaho can believe what he will about what the language provides. I can tell him that my intent was and our intent was in drafting this language to make it crystal clear that with regard to existing water rights, with regard to new water rights, with regard to Federal reserved water rights, we were not changing the law. And that is what we say.

Mr. CRAIG. Yes. Will the Senator yield?

Mr. BINGAMAN. I am glad to yield.

Mr. CRAIG. I think the Senator has answered my question.

The Senator has argued an interpreted point of view. We can stumble around on interpretations when it comes to western water. The Senator and I must be in agreement with exactly what is said or the Solicitor of the Department of the Interior will jump squarely into that hole.

Now, I believe the language of the senior Senator from New Mexico is much clearer. It says, "No water rights on Federal lands shall be acquired, perfected, owned, controlled, maintained, administered or transferred in connection with livestock grazing permits other than in accordance with State law concerning the use and appropriation of water within the State."

The Senator and I both know that water is critical in the West and water is especially critical as it relates to the grazing on these arid public lands, and who controls that water oftentimes controls the grazing. We already know the position of this Interior Department on water. They want it. They want to control it. In 1995, the Secretary went directly at us on that. We must not allow this to be interpreted. I hope that the Senator could agree with the language that appears on page 19, section 124 under "Water Rights of the Underlying Bill, S. 1459."

Mr. BINGAMAN. Again, Mr. President, I think the Senator from Idaho is pointing out a problem that does not exist. I think we have made it very clear that with regard to existing water rights, with regard to new water rights, with regard to Federal reserved water rights, there is nothing in this bill and there is nothing intended in this bill that is to change the law with regard to it. That is exactly what we have said. That is exactly what we mean.

There is no hole for the Solicitor of the Department of the Interior to jump into. There is no ambiguity here that needs an interpretation. Nobody in the committee raised this issue. The Senator chairs the appropriate subcommittee. This was not raised. This language has remained unchanged through the markup. Nobody has raised this concern until right now on the Senate floor. I do not think it is a valid concern. That is my response.

Mr. CRAIG. Will the Senator yield for one more question?

Mr. DOMENICI. Mr. President, I will yield another minute.

The PRESIDING OFFICER. The junior Senator from New Mexico has the floor unless he yields.

Mr. BINGAMAN. I will yield the floor.

Mr. DOMENICI. I yield 1 minute to the distinguished Senator, Senator CRAIG.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. I only say to the junior Senator from New Mexico that his language was not at issue because it was not the document that makes it to the floor of the Senate coming out of the committee for the one area of the committee of jurisdiction that I was responsible for.

All I say is I believe there is a difference. I believe there is an opportunity to interpret. I think it ought to be closed, and the way that can be closed is for the Senator to accept the language in section 124 of the language of the senior Senator from New Mexico. If the Senator will do that, I then have no argument.

Mr. DOMENICI. Wait a minute. The Senator will have no argument with that provision.

Mr. CRAIG. I thank the Senator for the clarification—with that provision.

Mr. BINGAMAN. Mr. President, I respond that if we could pick up the Senator's vote for our substitute, we clearly would be willing to consider that. But I should say that our language is, in my mind, very clear and clearer than the language in the underlying bill. So I suggest that the Senator accept our language rather than we accept his.

Mr. CRAIG. Returning to my time, when you speak of no water rights, that is all. That is inclusive. And when we speak specifically of no action, no water rights unless they are in accordance with State law, you have broken it out and allowed interpretation. I know this solicitor and I know this Secretary of the Interior, and I know westerners do not trust them. And this is one Senator who does not trust them either. I do not want to give them a chance to play interpretive games with western water.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The senior Senator from New Mexico.

Mr. DOMENICI. Does the Senator from Wyoming desire a couple of minutes?

Mr. THOMAS. Just a couple of minutes.

Mr. DOMENICI. I yield 2 minutes to the distinguished Senator from Wyoming.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, in general terms, it seems to me that what we have been doing in Congress for a year, year-and-a-half and continue to do is to try to find a way to cut through some of the kinds of regulations, maintain the effort without all of the difficulties, and one of the places—and I have worked very closely with it—is NEPA. I think we have to remember that NEPA was designed and developed as a process for major Federal action, major Federal action. That is precisely what we have done in the Domenici bill, is to hold that to major Federal action.

Now, the problem that has happened in the past, particularly with the Forest Service—we did it this year; we had to go through with some legislation—was that it was uncertain, it was uncertain, so the lawyers over at Justice and over at the Department of Agriculture said to the Department, said to the Forest Service, "Look, you have to do it. It doesn't say to in the law, but it is uncertain, and the Secretary may decide or may not decide." And that is how we ended up with all the NEPA things on grazing allotments. We have been through that the whole year long.

This substitute continues with that kind of uncertainty, and it says you do not have to do it if the Secretary does this, if the Secretary does that. We will end up right back as the subject of lawsuits.

Mr. President, that is precisely what we are trying to avoid, and the substitute puts us right back in that field where in the other one we have tried to make it clear that the NEPA requirement is there, the NEPA process is there for land use planning, the NEPA process is not there for those rather mundane, daily decisions that are made on grazing allotments and the kinds of things that in no stretch would constitute major Federal action.

That is where we are. So I just think that the whole point of this thing is to try to do away with that ambiguity. And the fact is that this substitute puts it right back there.

I do not understand what the sponsor was talking about on surcharge. There are two opportunities within the Domenici bill for subleasing. One, of course, is in the case of death or illness. The other is with a cooperative agreement, which we have had. You have to have an agreement with the agency to have subleasing. We want to continue with that. It is a very important part of grazing in our part of the country and our bill does that. This one does not talk about subleasing. It simply talks about surcharges.

So I think that moves away from what we are seeking to do. It is a matter of conservation use. There is an opportunity for conservation use. I think, though, if you are going to have a land use plan which requires grazing, which is part of the community, and part of what upholds these communities is grazing, then to say maybe you do not need to have any grazing, that you dissociate base land—we went through our map yesterday. There is a very real relationship between base land and winter feed, for wildlife or livestock, and these leases. The idea that you can come in from Cincinnati and have a lease, here, with none of the other portions that go with it, is not realistic. That does not reveal much understanding of the way these lands are interdependent.

So I think the Domenici bill, in these cases, deals both with conservation nonuse—it allows that, with an agreement with the agency—it allows for subleasing, and it deals with the surcharge. But most important of all, it clarifies this area of NEPA process.

Mr. President, I feel very strongly that the substitute simply weakens this process that we have been through for so long a time.

I yield the floor.

Mr. DOMENICI. Does the Senator desire some additional time? I will be pleased to yield 5 more minutes, because we are waiting for Senator REID. He will not be here for some time, so we are going to use up some time.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. DOMENICI. I yield 5 minutes.

Mr. THOMAS. Mr. President, I know we are talking here about the whole question of our bills. I do want to talk about how important it is that we have passage of this bill and I am pleased that, in the process of the discussion, it has been demonstrated that there is not a great deal of difference here. We have already talked about the fact that these fees do not amount to a great deal, in terms of money. But we are talking here, now, about trying to establish a long-term economy in our States. We are talking about stability in the area of grazing. We are talking about moving some of the decisions more close to the States and to the users.

Of course this is public land. I understand that. That is why we are so careful and so clear in the Domenici bill, to say this is multiple use. There can be no question about that. This question of dominant use is simply not a valid observation.

But we do need to begin to involve more closely, people who are in the area. For instance, Secretary Babbitt came out to the West all last year and the year before. We had these series of meetings. He talked to all these folks and, yet, came back with his proposal last year that was exactly the same as it was when it began.

We need to involve, for instance, land-grant colleges in the development of the policy that is involved here. We need to involve State departments of agriculture. And we are there to do that. We need to make it a situation where communities can depend upon this economy. It is one that is very important.

I think, most of all, what is not understood generally, and I know why—because it is unique to the West—is that these lands are interdependent. These are low-production lands, for the most part, these BLM lands. They do

depend on winter feed. They depend on deeded land for winter feed. They depend on deeded land for water. Sometime earlier this afternoon someone was saying you could have 400 acres of base land and lease 100,000 animal units. That is not the case. You cannot do that. You have to have someplace to take care of this livestock in the wintertime.

So we are looking for some balance here. I think we have worked at this, now, for more than a year. We have made considerable accommodations. Both the Senators from New Mexico have worked at this, and I salute both of them.

We have some basic difference. One of them, I think, is bureaucracy. I think we are seeking to reduce bureaucracy. Frankly, I think the substitute increases bureaucracy. We do not need to deal with that. We need to deal with NEPA. It is there, clearly there. I am the chairman of the subcommittee that is taking a look at the NEPA process and we need to find ways to reduce some of that bureaucracy.

I met with the new supervisor of the Black Hills Forest 2 weeks ago. They are in the midst of a forest plan. He has documents higher than his desk, the things they have done.

The people on the ground are beginning to understand that we need to reduce that NEPA process. Not do away with the purpose, not do away with input, not reduce the opportunity for people to participate, but not to have that process in the minutia of the management of a grazing unit.

We also need to do something with the forest. I think the Domenici bill treats it very well. It says "substantially the same." Our folks feel very strongly about that. There is no real reason to have two unique opportunities here. We have not told them to be exactly the same. We said you should be substantially the same.

So, I think we have made a great deal of progress here. Frankly, other than the water thing, the department does not want this because they like what they have. But I can tell you they have not moved very fast on the implementation of their regulations. If we do not make some changes now, a year from now, if they are still there, Babbitt is still there, you will see a real rush to change. I believe that very strongly. Now is our opportunity to soften some of those kinds of things that we think are difficult and troublesome.

We have this opportunity. So I really feel very strongly about the efforts that we have made. We have accommodated the other side to a great extent. And now we have a few areas in which we have different views. I think the one we just talked about in water is a different view. I happen to have the idea that States rights are very important in water. We have part of that in the agriculture bill that is going on right now. The water, when you live in a State where much of the water comes from snow pack, and much of it on the forest, then you have to have some real strong State rights in water. We make some progress, we make some progress in that.

I certainly encourage my colleagues to support this bill. I think we can pass it here in a very short while. I hope we do not accept the substitute and go back into this maze of NEPA regulations that are not necessary to have the proper outcome.

I yield the floor.

The PRESIDING OFFICER. The senior Senator from New Mexico.

Mr. DOMENICI. Mr. President, I want to say to my good friend from Wyoming, I kind of got myself carried away for a bit, because all the previous debate was under a time limit. But we are not under one now. So, nobody has to ask for time. They just have to get the floor.

As a parliamentary inquiry, am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMENICI. I want to speak for a few minutes and I want to say to anyone on the other side who arrives, who wants to speak, in the interests of an early evening I will try to cut it short when anyone arrives who wants to speak.

First, I would like to say that an awful lot has been said across this land about the National Environmental Policy Act as it applies to grazing leases. We have heard across this land those who side with the environmentalists, or those who are at least joined together in an effort to minimize the use of the public domain by the grazing community—we have heard talk about the National Environmental Policy Act as it applies to grazing as if it were the Bible for environmental protection. I mean that in both contexts of the Bible—specific and ancient. Neither is true.

The Bureau of Land Management, the entire Bureau of Land Management, does not use National Environmental Policy Act statements to control, manage, or evaluate the public domain.

Let me repeat. They do not use them. Frankly, I commend them. Just because there is a request for a National Environmental Policy Act implementation, or a NEPA statement, does not mean that it is the best, that it is even the prescribed, that it is even close to being the appropriate way to evaluate the environmental impact and the overall management, or land use as it pertains to managing a permit. The reason is because nobody had in mind when they drew up NEPA that we would even consider applying NEPA to a grazing permit and its renewal.

I say that because I have read the early history, and I cannot find anything in it that refers to such. Mr. President, do you know what it says? It says, if there is a major Federal action, then NEPA applies.

I cannot believe that with thousands upon thousands of grazing permits that anyone really believed that every time one of those was going to be renewed that it was a major Federal action. Again, the Bureau of Land Management does not use them. Frankly, the reason was precisely stated on the record at a hearing. No. 1, they are not very good for this kind of evaluation. No. 2, they are very, very expensive, anywhere from $50,000 to $1 million. And No. 3, they are very, very time consuming, anywhere from a quick turnaround of 6 months to a year and a half.

Frankly, accolades to the Bureau of Land Management for saying that does not even apply to grazing permits on the public domain lands.

How many times has it been written across this land by those who oppose the Domenici bill that you are taking away environmental protection because you are abolishing and abandoning NEPA? Let me repeat, NEPA does not apply today to the issuance of Bureau of Land Management grazing permits, and I have just told you why, because there is nothing magical about it being the only evaluating tool around to determine whether a 50,000-acre grazing permit in a State which might have 20 million acres or 30 million acres—there is nobody saying that is a major Federal action.

Let us move over to the other part of the public lands, the Forest Service. The best that can be said about NEPA and the Forest Service is that there has been a gradual movement in this administration in the last 3 years to use NEPA on public lands of the Forest Service where grazing is involved. It was used sparingly for the very reasons I just stated. But there are those who want no grazing on the public domain. They have had mottos to speak of how long cattle can be on the public domain. "Cattle free in '93" was a cry not too many years ago. I am glad they have not won yet, but we have been moving in that direction.

That kind of entity will begin filing lawsuits against the Forest Service, and sure enough, we will get some court someplace that will interpret this to mean NEPA applies to even the renewal of a grazing permit, and then they will come and tell us that is the law.

The law is what Congress says is the law. We are asking Congress in this bill to make sure the Bureau of Land Management's policy remains intact. We are also asking that with reference to the Forest Service and the Bureau of Land Management that there be one major use for NEPA, and it is big and it is important, and it is appropriate in its full implementation.

NEPA will be applied to the Forest Service and the BLM when the land use plan is developed for a national forest that is being reviewed for all of the various competing uses. A full environmental impact statement will be obtained; all the citizens will be involved. As the plan is put together, there will be rights to go to court, to litigate. But we contend in this bill, contrary to what my friend, Senator BINGAMAN, provides, we provide that beyond that, you use other tools to evaluate, not NEPA. I do not think that is antienvironment.

Senator BINGAMAN chooses to say there may be other cases. It is left up to the discretion of the Secretary. Frankly, I do not want to do that. This whole problem is before the Senate because of this Secretary of the Interior. That is why we are here, because Secretary Bruce Babbitt declared a war on the ranchers and decided that he would go all one way. How am I going to sit here with the understanding that he might be around for a while and give him the authority to determine when we are going to use environmental impact statements on the public domain when we have a bill right here before us? This is the place to decide it. We determine the law. I do not believe we should open that approach to the thousands of permits on the public domain. It is not the right tool.

Because I am standing here saying that does not mean for one second that I am for degrading the public domain. I am saying that a NEPA statement can be used for long delays, for reasons never intended by the act and, in particular, by those who would like to see ranching off the public domain. I do not want to sit here and hide under a tent and say that does not exist, because it does.

But I want to make one more point, one more time. The environmental impact statement approach to assessment is not currently being used on the BLM land day by day for issuances or renewals, and it is being used sparingly by the Forest Service. If there ever was a time when we had an opportunity to take a look at this, it is right now. Let us see how we really ought to apply it and how it ought to be done.

Frankly, I am so tired of having people interpret the bill that I have written and write reports and use this famous word "may." "It may have an impact." They do not tell you it will. That last report by the Congressional Research Service, if you read it, they have about six or eight mays—m-a-y. They do not say it will, they say it may.

I would like to say, as I read my friend and colleague's bill, I can find a lot of "mays" that I am sure he did not intend. But if I sent it over to the Congressional Research Service and said, "You look at it my way," they will say, "Maybe it does the following and maybe it does the following."

For instance, in our bill, we unequivocally state that nothing in this legislation shall change the rights, privileges and all the other things that you talk about for hunting and fishing. We put it in because we kept getting bombarded that we were trying to take away fishing rights and hunting rights. I might say that provision is not in the bill you produced, the bill before the Senate. It may be that since that provision is not in there, there may be a serious negative effect against trout fishing and hunting under the BINGAMAN substitute.

I hope everybody is listening carefully to what I am saying, because that is the way the underlying bill we have before us has been treated more times than not. I can go through and cite a number of others. The substitute before us does not iterate or reiterate that multiple use is the order of the day, if I understand from the staff who have read it. It does not say that.

Senator BINGAMAN would say, I am sure, it does not have to be in there. I would say, like some of those who have reported on the Domenici-Craig bill, "Well, since it isn't in there, it may be intended to have a negative impact on multiple use."

I am not suggesting Senator BINGAMAN intended that. But neither do I believe others ought to insinuate that our bill does that when they have some difference of opinion, or when they approach the interpretation from a position that I do not have.

I do not intend to go through Senator BINGAMAN's bill in detail. But I want to say one more time—and perhaps a better way than yesterday; and it is good that the distinguished Senator from Rhode Island is in the Chamber because I have talked to him about this issue for a number of times—let me say to the U.S. Senate, sometimes we come to the floor and talk politics and sometimes we exaggerate our position and sometimes we state or understate, depending upon how the debate proceeds, but this Senator, from the State of New Mexico, one of the most beautiful States in America, this Senator who has seen more wilderness created in New Mexico under bills that I have introduced than any in history, I do not intend to spoil the public domain nor to turn it over to one of the myriad of multiple users.

If I thought for a minute that the bill I have before the U.S. Senate was calculated to make the public domain worse or to degrade it, or to take away the power of the Forest Service managers and the BLM managers, I would tell everybody to vote against it today. I am not here for that reason. I am here simply because I am convinced that multiple use can be made to work. It is the law of the land. I think it should continue to be. But I do not believe ranching can continue under the regulations established by Secretary of the Interior Bruce Babbitt.

I believe if those stay in effect there will be no more ranching. For those who would say, wait a minute, Senator, it has been in effect for 6 months, well they are written such that none of the impact will occur for a long time. If the Secretary has time to implement them, he will not implement them until after the election. I do not say that very often. But I believe that from the very soul of myself that this Secretary made a mistake when he adopted the so-called "Babbitt Rangeland Reform '94 regulations." If I were a poet I would phrase something about that.

Anyway, we are going to do away with Secretary Bruce Babbitt's set of regulations and substitute some that we think will manage the range properly, and do three very important things—stabilize the public domain from the standpoint of the ranching community so that they are not on a constant roller coaster depending upon the administration, depending upon the regulator, depending upon who gets them into court under some lawsuit.

We will try to stabilize it at a level and we will see, once and for all, can ranching as a way of life exist in the public domain in America? This may be a debate about whether you want to have any more cowboys out in the West that are true, or whether you want them all to come from Hollywood. This may be the debate. There will be plenty of it in Hollywood because it is a fantastic culture. The lifestyle is tremendous.

I did not come from that lifestyle. I did not know anything about it when I became a Senator. In fact, I was from a place where you could be city folk in the State of New Mexico; that was Albuquerque. Anywhere else, because the towns are all smaller, I probably would have been somewhat associated with ranching. I was not, but I have been since then.

I believe we ought to stabilize that environment without jeopardizing the other multiple users. I think there is a chance of doing that. The only thing that stands in the way is a vote here in the Senate and a pen in the hand of the President of the United States. He will have the last shot when we get this bill through here. I hope we can get this accomplished.

My third point is, that for those who insist that the ranching community are abusers of the public domain, that the community is not a conservation community, for those who insist that they are the ones who will ruin the range and the other people will preserve the range, that they are the ones against wild animals and habitat, let me suggest they are the best conservationists around. Let me suggest, but for their actions, habitat would disappear in many areas of America. Not just a little bit, but in a manifold manner it would start disappearing.

Those who live and work on the land provide the water, they provide the management, and yes, a few riparian areas have been overgrazed because of the water being short in other areas, but most ranchers take as good a care of the resources as they possibly can. So I am here because I have confidence that this system will work, but I do not have one bit of confidence that multiple use will be preserved with equanimity and fairness for all to use if we leave the Babbitt regulations in place. It is just that simple.

I commend my friend, Senator BINGAMAN, my cohort from New Mexico, because to some extent he agrees. He does not come before the Senate saying we want to leave every one of Secretary Bruce Babbitt's regulations in place. He has selectively decided some of them must go. I believe our bill is fairer for the ranching community and is more apt to add stability to the range and protect the other users.

So this may be the last word I have on this. I would not have spoken this long if there were Members on the other side ready to speak. I see Senator BRYAN is here. I yield the floor, and I thank the Senate for listening.

Mr. BRYAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. BRYAN. I thank the Chair, and I thank my friend, the distinguished senior Senator from New Mexico, for yielding the floor.

Mr. President, most of those who are privileged to represent the West on both sides of the political divide recognize that we need to enact responsible grazing legislation that balances the concerns of the livestock industry with the concerns of the conservation community. It is in seeking that illusive goal of balance that we find ourselves operating from a slightly different approach.

In my view, notwithstanding the best efforts of the distinguished senior Senator from New Mexico, his bill fails to achieve that balance and, in my view, would seriously threaten the multiple-use concept which has governed public land policy for decades. It is for that reason that I rise this afternoon to support the substitute amendment offered by the distinguished junior Senator from New Mexico, which I believe represents a preferred course of action. The Bingaman substitute is a thoughtful, balanced approach to correct what is wrong with the current grazing regulations.

Let me just also note for the RECORD, Mr. President, that each summer on the occasion of our recess I spend most of that recess traveling throughout rural Nevada. Today Nevada, paradoxically, is the fastest growing State in the country, although 87 percent of the total land area is under Federal jurisdiction. It is also one of the most urban States in the country, with most of the population located in the metropolitan Las Vegas area, which today exceeds 1 million people, and in northern Nevada in the so-called Truckee Meadows, embracing Reno-Sparks. One might logically say it extends to Carson City and Douglas County, that they are as well in a metropolitan area.

Although rural Nevada represents a small part of the population, I have been concerned, since the time I first assumed statewide office in 1979 as attorney general, with the concerns of those good people who choose, as our colleague and friend, Senator DOMENICI, points out, a lifestyle which has been part of the heritage of the West and part of the heritage of our State.

Their concerns are legitimate. They are good people. They work hard. They want to protect a livelihood and a lifestyle which is terribly important to them. It is for that reason, Mr. President, for the last 6 months I have been a participant in a bipartisan group of western Senators and their staffs in an effort to reach a consensus on grazing legislation.

Notwithstanding the hours of effort made on both sides of the political aisle, it is my view the negotiations failed because of the approach insisted upon by the distinguished senior Senator from New Mexico, that is, his insistence on using S. 1459, his bill, as a baseline for discussions. Because of that methodology or that approach, which sought to codify a series of old grazing regulations, superimposing a new series of regulations and statutory provisions as well, it became very difficult to modify his bill, and ultimately we failed to achieve a consensus in working out an issue which we all share a legitimate interest in resolving.

I would note that some improvements were made to the Domenici bill, as a result of our discussions. But I have never been of the view that Congress should micromanage grazing policy to the extent that is provided for in the Domenici bill. For example, the bill limits public participation in grazing decisions by listing seven arbitrary instances in which an "affected interest"—those are words of art—occur and individuals are entitled to be notified of a proposed grazing decision. It denies the public the opportunity to protest a grazing decision; it exempts on-the-ground grazing management decisions from the National Environment Policy Act; and finally, it does not target specific, troublesome regulations for repeal, rather, it contains a blanket repeal of all the current BLM grazing regulations.

What we are presenting here today in the Domenici bill in many respects takes a step back from the policies originally established during the Reagan administration under the tenure of Interior Secretary James Watt. To put that in some context, the former Secretary has been accused of many things, but he has never been accused of being an environmentalist. I believe we ought to make the necessary changes to the so-called rangeland reform proposals that have been offered under Secretary Babbitt.

Efforts to limit the public's right to be involved in grazing decisions will not, in my opinion, bring stability to the ranching industry, nor will it improve rangeland conditions. It will only lead to continued turmoil and lawsuits that are a drain on the resources of both the ranching community and the Federal Government.

By way of contrast, the substitute amendment offered by Senator BINGAMAN, which I am pleased to cosponsor, reflects a balanced approach that, in my opinion, addresses the legitimate concerns of the ranching industry. I repeat, again, I believe that there are many such legitimate concerns.

It also addresses the equally valid concern and interests of the conservation community. It does not arbitrarily repeal the current grazing regulations and replace them with an inflexible statutory scheme which, in my view, S. 1459 would create.

For example, in response to concerns raised by Nevada ranchers and others, the Bingaman substitute waives the application of NEPA for permit renewals and transfers unless significant changes are made. It contains expedited NEPA provisions where grazing activities would not have a significant effect on the environment. I believe those are positive and instructive changes that meet some of the concerns raised by the Nevada ranchers. It also reinstates the grazing advisory boards and expands the surcharge exemption to include spouses and grandchildren, or children which Nevada ranchers have raised.

On the other hand, however, in response to concerns expressed by conservation groups, those who enjoy the public land for outdoor recreational use, whether hunting, fishing or hiking, these organizations, as well, have legitimate interests. I believe the Bingaman substitute protects public involvement in grazing decisions and requires that other public land values, as important as grazing is, it is not the only important public land value that needs to be protected, but wildlife is given equal consideration in the decisionmaking process in the goal of achieving a balance, recognizing that we want to be fair to Nevada ranchers, we want to make sure they are able to continue to use the public lands as they have for generations and to provide for themselves and their families.

We also need to recognize that the West has changed. The demand made upon public lands for outdoor recreational uses have grown exponentially over the years, as Nevada in my own lifetime has gone from a State

whose population the year I started school in Las Vegas in 1942 had slightly more than 100,000. We used to say, somewhat tongue-in-cheek but true, that every person, every man, woman, and child in Nevada, could be comfortably seated in the Los Angeles coliseum in 1942. Today, it is the fastest growing State in the Nation. Our population, small by contrast with some of our larger States, is 1.6 million. So the uses of public land, where we strike that balance, is very important to this Senator in making sure that public recreational values are considered in the decisionmaking process, as well as grazing interests.

In addition, the substitute offered by Senator BINGAMAN specifically authorizes conservation use so that nonranching entities can hold a permit and rest an allotment if the practice is not deemed inconsistent with the land use. Conservation use, as a management practice, is particularly important to us in southern Nevada. It is an integral part of the Clark County's Habitat Conservation Plan, a plan devised in response to the concerns advanced by many about the federally listed endangered species, the desert tortoise. Without that habitat conservation plan, a moratorium might very well have gone into effect with potentially catastrophic economic impacts for those of us who make southern Nevada our home. That habitat conservation plan was a compromise achieved as a result of the ability to use conservation use as a management practice.

Another important provision of the Bingaman substitute concerns the use of the portion of grazing fees that are returned to the States and dispensed to local grazing boards. The substitute provides that these funds may only be used for on-the-ground range improvements and for the support of local public schools in the counties in which the fees were generated. Currently, those fees are subject, in my opinion, to an abuse, an unconscionable abuse, in that these moneys are currently being used to finance lobbying activities and litigation.

Nye County, NV, has used more than $40,000 of these funds to finance a legal battle against the BLM, where they have asserted a claim of ownership over all of BLM publicly administered land in Nye County. This is indefensible. I acknowledge that my friends and neighbors in Nye County have every right to avail themselves of the Federal court system to make these claims, but they do not, in my view, have the right to rely on federal grazing fees returned to local grazing boards to fight these causes. Those ought to be confined to on-the-ground improvements for public schools in the county in which the fees are generated.

The Bingaman substitute, in my view, strikes an appropriate balance by reinstating the grazing boards but prohibiting this outrageous behavior and improper use of these funds.

As I began, I mentioned over the year I have had a chance to visit extensively with Nevada's ranchers and to hear their legitimate concerns about the new grazing regulations, concerns that I feel should be, but are not, addressed by the legislation before us today. The ranchers I have met with are honest, hard-working people who asked Congress, in essence, to set ground rules for grazing on public lands that will bring a sense of stability to the ranching community. If stability is of paramount concern to the ranching community, it is my view that S. 1459 is not the answer.

Finally, Mr. President, let me conclude by reminding my colleagues that the administration has promised to veto S. 1459 as it is currently written. Our only hope, if we are interested in achieving that stability and balance to which I have addressed myself earlier this afternoon, is to enact a balanced piece of legislation which the administration can sign into law.

For those reasons, I strongly encourage my colleagues to join me in the Bingaman substitute so this issue can be put to rest and a sense of stability can be brought to our friends and neighbors in the ranching communities. I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Montana.

Mr. BURNS. I thank the Chair. My statement will not be very long, but I just wanted to make a couple of comments. We just completed debate on the salvage timber, and the package offered by Senator BINGAMAN is, at best, described as yet another example of a mindset that prevails here in Washington, DC.

Yesterday, I stated in this body that in order to answer that question, we, this generation—this generation—if we are to hand over to the next generation, our children and our grandchildren, a better Earth than we were handed, a world that will sustain them and their daily needs for food and fiber, we have to approach the way the Federal Government writes rules and regulates them.

In the salvage logging debate, there were examples of actions taken by local authorities to protect the integrity of the law and the intent of the law. It has, in my State, brought some peace to the woods. There are examples of how land managers went the extra mile involving the local groups in the decisionmaking process of salvage. The involvement was loggers, environmental groups, local government, and land managers themselves. We should really congratulate the region I director of the U.S. Forest Service, because he used that process to determine a timber sale and used the same guidelines that we have always used, adhering to current environmental law. As dedicated as he is to the forest, he used all of those, and the result was that local folks signed off on the salvage sale.

Forest health is the goal, and it was then. Salvage is part of that goal. It is a dual goal. Loggers have gone back to work, mills are turning out wood products again for Americans—all Americans—and we are having and using forest resources that have been tied up in the courts for a long time.

Decisions that are made on the ground work best. Yet, this substitute calls for decisions to be made thousands of miles away from the resource that is now being used by all Americans, we all benefit.

At this point, I want to associate myself with the words of my friend from Iowa last night, Senator GRASSLEY, in his brief statement made on this floor. There are times in this country when we who are involved in agriculture get a little bit timid about what we do, telling the people what we do. Well, I am here to tell you it is about time, and this country better wake up and realize what the production of food and fiber does for this Nation. Yes, we like to call ourselves agriculturalists, proclaiming the importance of it. I think we get timid because we go under the false assumption that everybody understands and knows the importance of agriculture and knows that we produce the largest segment of the GDP in this country, over 20 percent. Yet, that GDP has produced a raw product by less than 2 percent of the population. It is also the largest export this country has. In other words, we feed the world.

Now, why do we so distrust the direction in which the present Secretary of the Interior is taking us? Can I cite one example? Wolf reintroduction into Yellowstone Park. Hearings all over the West. We did not hear a lot of support for that. Yet, it has caused some polarization of groups that actually share the same goal in my State—share the same goal of a better world and, yes, the environment. But the actions of the Federal Government and the arrogance of this particular occurrence have damaged the relationship within and without the communities in Montana. Not only is it expensive, spending your tax dollars, but if you contrast that, exactly the same thing is happening in Glacier National Park. But that is a natural migration of wolves from Canada. That does not seem to get any headlines in the newspaper. In that area of Montana, there is hardly any contact between man and wolf because, basically, both have learned the hard reality of the rules of survival. One never hears of that occurrence. Yet, we have wolves up there in Glacier Park and in the Bob Marshall. But one hears of the artificial introduction of that animal into that Yellowstone Park, which, in my opinion, is doomed to fail.

There are different fee rates. In my opinion, there is one main problem of this debate. We are trying to find the answer to a very, very difficult question. I say this: We are trying to recommend a policy of "one size fits all," when there are differences in the lands, the topography, thus, the production capability of the lands. Those differences are huge.

I guess that is why I so strongly recommend that we allow all the major decisions to be made on the ground locally, to involve local people. There is no way that we, in Montana, run and manage our range the same way as they do in New Mexico, Colorado, Nevada, or anywhere else. There are different soils, different growing seasons, different weather conditions, different patterns, all dictating managing our range differently. It is just like privately owned land. All Federal lands and locales are not alike. The management scheme has to be different to attain the same result. Anyone who has ever had anything to do with land understands that. I understand that. I was raised on a small farm of 160 acres, with two rocks and one section of dirt in northwest Missouri. Every acre was not the same on that little 160 acres either. But you knew how to handle them. You farmed each one sort of differently in order to get the desired results.

That is hard to explain to folks who have not had a personal relationship with the land or a real understanding of it. Most times, they do not care about the knowledge, or the common sense, or even less caring and respect for the thousands of families who have the sense, knowledge, history, and responsibility to manage this land that sustains them, and the rest of America, as well.

Let us not go backwards. Let us make those decisions on the ground. The Bingaman substitute takes us backward. Let us force people to sit down and talk, but let us base our decisions on the right decisions and on what has to happen on rangeland. Take the management. If hunters are worried about access, in the Domenici bill there is express language dealing with access. If you are worried about wildlife, we have already given you the figures that we have more wildlife today than ever in the history of this country. Water quality, that, too. Once you take the management of the land away—and this could well do it because there are folks who do not have a real good understanding—then we are in real trouble in the communities that derive a living from this resource. It is resource management.

So what I suggest and what I tell my colleagues is to defeat the Bingaman substitute and let us pass the Domenici bill, because there have been so many hours and so much work that has gone into this bill, working with the administration and with everybody concerned. No, everybody will not get everything they want. But everybody is going to want what they get. Let us put people into the equation whenever we start talking about resource management on public lands because real people are involved and will be impacted.

Mr. President, I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I rise in support of the Bingaman substitute. In August of 1994, as a member of the Interior Appropriations Subcommittee, when we were attempting to work out differences with the House, we had adopted in that conference a measure that was debated long on this Senate floor. In fact, the debate went on for several weeks. Four or five cloture votes were held on that matter. I believe we got 57 votes on several occasions, but we were never able to reach that magic figure of 60 to terminate debate and go forward with a revision of the grazing law. Had we done so, Mr. President, we would not be here today debating whether or not the Babbitt regulations were good or bad. We would have been working under a series of rules that would bind one administration to another. Ranchers would have had some defined rules in law to work under. They would have been able to obtain loans on their property, and there would be peace and quiet in "Ranchland U.S.A." The problem is, however, Mr. President, that there were those who felt it was better not to adopt that.

Following the unsuccessful effort to invoke cloture, even though the majority of this body and the other body approved the compromise, Secretary of Interior Babbitt issued a series of regulations that are now in effect. The proposed compromise that was debated so long and hard here in my opinion was better than the Babbitt regulations, much more defined, not nearly as complicated, direct to the point, and would have allowed the ranchers of western America to be able to determine how they should run their properties. There were many months that went by before the regulations were promulgated. They were phased in. The ranchers even today really do not know for sure what the impact of those regulations are going to be. They are all in effect. They certainly are not as disastrous as prophesied by a number of people.

I say this: I think what has gone on this past year has been constructive. It has been educational, I think. I extend my appreciation to the western Senators, particularly Senator CRAIG THOMAS and Senator JOHN KYL. Those two Republicans and this Senator were appointed by the western Senators to try to come up with a compromise. We were making great headway when the House ducked grazing reform and reconciliation, and had the work terminated that we had done. But even that was not a failure because the work that I did with the Senator from Wyoming and the Senator from Arizona was helpful in the next wave of negotiations that we had. Senator DOMENICI's first bill that was offered had around 65 pages in it. After indicating to him that the bill was too complex, too broad, he came out with another draft about half that size. That is what we have been working from.

We have made progress. There are matters in this Domenici bill that are ones that I asked to be put in that bill. I appreciate that. Progress has been made. That is one reason that the debate today is not as acrimonious as it was in August 1994. The debate is constrained. It is deliberative and constructive. I have listened to almost all of the debate that has taken place, and I think it is something that the Senate should feel good about.

But I reiterate that we would have been better off, there would have been finality, if we had adopted the compromise of August 1994 that came out of Interior appropriations.

We are now faced with reality. We have been told by the administration that if the Domenici bill is adopted it will be vetoed. I think it is quite clear that, if it is vetoed, the veto will be sustained. That is one reason I feel so strongly about the alternative, the substitute, that has been put together by a group of western Democratic Senators. I believe that we could prevail upon the President not to veto that bill.

I understand the importance of livestock grazing in the western part of the United States. The small town that I was raised in southern Nevada had both mining and ranching. I worked as a boy and as a young man for those permittees of grazing in the southern part of the State around Searchlight. I did all kinds of things for them. Most of it was manual labor. But I understand—having gone out and taken water to cattle, taken feed to the cattle, cleaned out wells, generally helped those ranchers maintain their ranch on this very arid land—how important it is.

Most all ranchers, Mr. President, are hard working, good citizens—really the epitome of what is good about our country. They have great respect for the land. They consider it their land. I have no problem with that. But, Mr. President, we have talked today about western ranchers in a flattering way. And I repeat that the vast majority of those in the ranching community are good citizens. There are some who are not. There are the so-called proverbial rotten apples that spoil the barrel. What did they do? There are all kinds of things that these few rotten apples do. One is they deny access to public

land. Others do not have a concern for the continued health of the land.

Mr. President, in 1986 we debated in this body the Forest Service Wilderness bill for the State of Nevada. There had been 25-plus years since the Wilderness Act was passed. And Nevada basically had not done their work. I worked on that for a long time. Even though I started in the House of Representatives before I came here, after Senator BRYAN arrived in the Senate we were finally able to get it passed preserving in Nevada beautiful land.

Nevada is the most mountainous State in the Union. Most people think it is arid with no greenery on it. That is not true. We have great mountain meadows and streams. We have animal life, antelope, and mountain sheep. We even have mountain goats in Nevada, and beaver, and eagles. It is beautiful country. After the wilderness bill was passed some ranchers in Nevada blocked off their land. As an excuse for not allowing hunters onto public lands they said it was because of wilderness. It is simply not true.

We have, for example, in northern Nevada a public land rancher who has blocked access to public lands on a road that was public in the mid-1800's to the mid-1980's. This same individual has harassed hunters on public land that come near his land. Also, this individual rides his horse onto public lands in an effort to disrupt hunting. Not coincidentally this same individual operates a guide service, and has a financial incentive to disrupt public hunting. He wants it to be private hunting. It is only one rotten apple. But it is enough to spoil the barrel.

Another example that has been brought to my attention is a grazing permittee in northern Nevada who, armed with a rifle, harassed hunters on public lands.

Mr. President, we need to ensure that the legitimate users of the public lands are not prohibited from hunting on these public lands, nor prohibited from using these public lands, nor even discouraged from using these public lands.

We need legislation that will provide land managers with the flexibility to protect the environment with multiple use without placing an administrative burden or undue restriction on hunters.

Mr. President, as my colleague from the State of Nevada indicated, when he started high school there were less than 100,000 people in the State of Nevada. We are now approaching 2 million—not large by the standards of the State of Pennsylvania, the State represented by the Chair. But it is a big State in our mind, and we have tens of thousands, now in the hundreds of thousands of hunters throughout the State of Nevada. It used to be, when my colleague and I were young men growing up in Nevada, that rangelands were used basically by no one other than cattlemen, but it is not that way anymore. There is competition for those lands: off-road vehicle users, all-terrain vehicle users, snowmobilers, backpackers, cross-country skiers, and family outings to go on picnics. There is lots of competition for those public lands in addition to the hunters and fishers and the ranchers.

We need to make sure that those people who ranch on public lands treat them the way they should treat the lands. They are not the lands of the individual rancher. They are public lands and should be treated accordingly.

As I have indicated, in the past, ranchers have had the public lands to themselves. The West is different today with many competing uses for these public lands. We cannot go backward. Today, in Nevada, we have had a tremendous increase, as I have indicated, in the number of hunters and other people who want to use the land. Because of these competing interests, it is essential we get a bill that provides for a balanced approach to multiple use. The Domenici proposal does not adequately provide for this.

Now, Mr. President, as I complimented my friend from Wyoming, my friend from Arizona, I also compliment the senior Senator from New Mexico. He has come some ways in this bill, and I appreciate that very much. I also compliment the junior Senator from New Mexico who I think with this alternate proposal has done a good job in really framing the issues before this body.

As I have indicated, a balanced approach to multiple use is not adequately contained in this bill. It elevates a single use of the public lands above other multiple uses, and it reduces the agency ability to protect the rangeland environment and limits citizen involvement in public lands management.

It is not my goal to prohibit livestock on public lands, although that is how some opponents of the Domenici bill were characterized yesterday. I think that I have had as much experience as most western Senators, more than others, in grazing land, ranch land generally. It is not my ultimate goal to prohibit livestock grazing. I think we should maintain it. I think grazing livestock, if done right, makes land healthier. It makes it better. But it has to be done right. And we have to allow the land managers to make sure that those few rotten apples that are going to spoil the barrel are taken from the barrel, they have the ability to take the rotten apple out of the barrel.

That is all we are asking in this alternative, this substitute. The substitute represents a compromise designed to provide a balance between providing stability to the livestock industry and the need for the BLM and Forest Service to have the flexibility necessary to responsibly manage Federal grazing lands and ensure multiple uses of the public lands.

My concerns with this bill of my friend, the senior Senator from New Mexico, I will talk about. The alternative prohibits use of the State's share of grazing fees for litigation, ensuring that the money is used to benefit the land or community, that is, making improvements in the land, riparian improvements, other improvements on the land. Currently, in Nevada, the State's share of Federal grazing fees is being used to sue the Federal or State government like the Nye County case, the so-called Sagebrush Rebellion II case. I have to tell you, frankly, Mr. President, everyone knew in the beginning that case was a loser. You would not have to graduate from Harvard Law School; I do not think you would have to graduate from Harvard elementary school to understand that that effort was doomed to failure.

In spite of that and the demagoguery that went forward based upon it, they used these moneys which were intended to be spent on the land in Nevada, improving water holes, fixing streams, building a road maybe—that is not what they used it for. They used in Nevada almost $300,000 of Federal moneys for legal counsel, foundation, associations, lawyers generally. This money was wasted, a total waste.

The bill that has been propounded by the senior Senator from New Mexico makes a provision for that. It does a good job. It is not as good as the substitute, but it is fine. It says those moneys can still be used for lawyers for administrative hearings. I do not think they should be able to use them even for that, and we have plugged that hole in the substitute.

The money that comes from these grazing fees that is returned to the States, Mr. President, I want used to improve the land, not to be spent on litigation or lobbying activities.

As I have indicated, the Domenici bill restricts the use of the State's share of the grazing fees, but it provides a number of loopholes. It may allow States to continue to use Federal moneys for lobbying and administrative appeals. We need these moneys used to improve the land.

The Domenici bill excludes grazing activities, management actions and decisions from NEPA.

The substitute that I am cosponsoring represents a compromise between sportsmen and ranchers. The renewal or transfer of permits is not subject to NEPA unless it will involve significant changes in management practices or significant environmental damage is occurring or is imminent.

This is not good enough. For example, when a rancher's permit comes up for renewal, if he or she has been a good steward of the land and has maintained the health of the land, that renewal will not be subject to NEPA nor

should it be. If, however, as a result of an ongoing drought caused by nature or bad management practices of the rancher environmental damage has occurred or is occurring, renewal would be subject to a NEPA review.

That does not sound unreasonable. It also provides a mechanism to exclude grazing actions such as moving a fence or moving a stock tank from NEPA. That is what the alternative does, that is what the substitute does, when the activity is determined to have a significant impact on the environment. That is the way it should be.

The Domenici bill does not provide for public participation up front in the decisionmaking process. What this is going to cause is a lot more litigation because you cannot stop people from filing lawsuits, and that is what they will do early on. So what we need is to continue some semblance of administrative proceedings on these decisions that have been made. This will avoid litigation.

Yesterday, in the debate, it was stated that the Domenici bill does not take away rights from fishermen and hunters. I respectfully submit that perhaps the Domenici bill might not limit sportsmen's right to access. It does, however limit their access to the process. Sportsmen and other users of the public lands are precluded from involvement in the development of grazing decisions. They should be involved, because, Mr. President, they have rights to that public land. It does not involve the public up front in the decisionmaking process, and it should.

The substitute that I am cosponsoring allows persons defined as "affected interests" to be consulted on significant grazing actions and decisions taken by the Secretary. No formal, complicated process is mandated. What it does, though, is strike a reasonable balance between the Secretary's regulations, which would include involvement by the "interested public," and the Domenici bill, which provides for participation only after a draft decision has been made.

In the Domenici bill, only permittees and lessees are able to protest proposed management decisions. This is wrong. All other citizens could be excluded from taking an active role in a protest and appeal process. This restricts the ability to resolve conflicts early and, I believe, cheaply. So, in our substitute, affected interests are allowed to protest proposed decisions, allowing these conflicts to be resolved earlier and more informally, without litigation.

I also say that there are some who think, if you just eliminate this affected interest ability to challenge some of these administrative decisions, they are not going to challenge them. They will do it, but they will do it in the courts.

The Domenici bill limits the managers' ability to tailor and develop terms and conditions to protect winter forage for elk and deer, nesting habitat of game birds, water resources for wildlife, and water quality, and healthy riparian interests. Only allotments under an allotment management plan can have terms and conditions attached. But this will not work, because only 20 percent of the permits are currently under an allotment management plan.

So, under their proposal, 80 percent of the permits simply would not be under terms and conditions. And it would limit the manager's ability to do anything about tailoring and developing terms and conditions to protect the things that I have already outlined.

Allotment management plans look to the lands in a specific area and prescribe the livestock grazing practices necessary to meet multiple users' objectives. They can be costly and time consuming to complete. So we cannot decree that 100 percent of them be done. But, to the contrary, we cannot take away the managers' ability to put reasonable conditions on the land. The substitute balances the need for the BLM to have adequate authority to properly manage the public lands to ensure their long-term health with the need for ranchers to have some stability in terms and conditions of the grazing permit that we have talked about.

The proposed substitute ensures that ranchers will not be subject to arbitrary changes in the terms and conditions of a grazing permit. I think that should make the ranchers feel secure. One of the things we talked about when we had this long debate in August of 1994 was the fact that we needed to give the ranching community stability. We needed to give the ranching community certainty, so they could go forward and borrow money, make improvements. Here it is, almost 2 years later, and things are more uncertain than they have ever been. I respectfully submit, my friends who so badly want to get the Domenici bill passed, for what? The President is going to veto this bill. No matter what happens when we get it out of the House, the President said he is going to veto it.

I think we would do much better if we came with a bill that would be approved, that will be voted for by a majority of the Democratic Senators from the western part of the United States, and I am sure we could have some influence on the President to sign the bill.

Mr. President, the Domenici bill impedes permittees from employing proven restoration techniques, such as conservation use, by threatening permit loss if they do not make grazing use under the terms and conditions of a grazing permit.

What this means is that if someone wants to purchase a grazing permit, they cannot do it unless they want to ranch on it, unless they want to graze on it. It was stated last night that the minority chose to make nonuse of public lands a dominant use. This simply is not true. I recognize what the benefits of conservation nonuse can provide to the environment, and I believe it should be an option available to permittees.

In Southern Nevada, because of an endangered species problem, an animal called the desert tortoise, construction basically was brought to a grinding halt in the Las Vegas area.

Mr. President, we were able to work out our problems very quickly. One of the ways we were able to work out our problems under the terms of the Endangered Species Act was we had a conservation nonuse program. Clark County, NV, where Las Vegas is located, along with the Nature Conservancy, holds allotments in conservation nonuse for the benefit of this endangered species and allowed us to get back to work in building the most rapidly growing city and State in the United States.

Under our substitute, conservation use may be approved for periods up to 10 years if consistent with the land use plan. This is important. I will also suggest I do not know what my friends on the other side of the aisle are worried about, or I should say my friend the senior Senator from New Mexico, because under the present rules and regulations in the law, there is not a big line forming for people to sign up for conservation nonuse. It is used infrequently, but when it is used, it is important.

I repeat, there is not a long line of institutions or people saying, "I want a conservation nonuse permit." It does not happen very often, but when it does, it is important.

If the Domenici bill were approved, it, in effect, would deny citizens of this country the ability to hold a grazing permit. I think that is wrong. In our substitute, permittees do not have to be in the livestock business to hold a permit.

Another problem I have with the bill of my friend from New Mexico is it requires managers—that is, someone from BLM or Forest Service—to provide 48 hours of advance notice to the rancher that they are going to take a look at the land. It inhibits the ability to manage the land. It also limits the flexibility of the manager to do complete monitoring. Mr. President, who are they trying to protect? They are trying to protect one of the bad apples. That is the only type of individual who would be concerned about someone coming on their land to see if they were grazing too many cattle in a riparian area or whatever else they were doing to degrade the environment.

So the substitute I am cosponsoring with others does not require advance notification for monitoring or inspection.

Also yesterday, it was stated that proponents of the Domenici bill were not here to defend the chief executive office's tycoons who bought some of this land out West. I acknowledge that. I think that is probably true. The subleasing provisions, though, of the Domenici bill limits the ability of the Forest Service and BLM to manage subleasing.

What do I mean by this? What I mean by this is if someone named Tom Jones has a grazing permit, under our provision, if he wanted to sublease this to his children or grandchildren, he could do it. But if he wanted to sublease it to Bob Jones from the State of Arizona or the State of New Mexico or someplace else, he would not be able to do it. The permit should run to the permittee and should not give them the right to start leasing Federal land and making money on it. That, in effect, is what they have been doing. It should be stopped. We should not allow subleasing unless it is to family members.

I would also suggest, Mr. President, that the Domenici legislation requires excessive amounts of costly time for monitoring rangeland studies and other delays before management actions that protect the environment can be implemented. That is not the right way to go. Agencies do not have the money nor the manpower to monitor all allotments. Our substitute allows agencies to rely on both monitoring data—and that means things they have actually seen—monitoring data, information they have collected, and also objective data that they have seen in making their decisions.

The Domenici bill excludes groups such as Ducks Unlimited, Trout Unlimited, and other hunting and fishing groups and State agencies from entering into cooperative agreements for the development of a permanent range improvement or development of a rangeland.

Mr. President, 5,000 cooperative agreements for range improvements are currently issued to nonpermittees. And 503 of these are in Nevada alone, representing about 15 percent of all range improvement permits and cooperative agreements in the State. The DOMENICI bill would dramatically limit agencies to leverage funds for range improvements. That is something we should not allow to happen.

The substitute that I am cosponsoring allows nonpermittees to enter into cooperative agreements.

Mr. President, in short, the Domenici substitute is certainly better than the first draft we got of the bill. I say here that I appreciate the work that has been done by all western Senators. I am especially grateful to the staffs of all western Senators who have spent hours and days and weeks trying to come up with this. And there has been a spirit of cooperation. I wish we could have arrived at a bipartisan bill. We could not. But the issues have been narrowed significantly as a result of our sitting down and spending this endless time together.

In conclusion, Mr. President, what I believe that the substitute offers is balance. It provides balance between multiple uses and ensuring that no one use is put on a higher plane than any other.

The bill by my friend, the senior Senator from New Mexico, does not provide this balance. It elevates a single use of the public lands, grazing, above other multiple uses. That is not right. This is not what public lands are all about.

I extend my appreciation to the junior Senator from New Mexico for his tireless efforts in coming up with what I think is a veto-proof bill, one that we should all join in supporting, get it out of the House, get it signed and allow Nevada ranchers and other western ranchers to get about their business.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. DASCHLE. Mr. President, for the last 2 days we have discussed the merits and shortcomings of the Public Rangelands Management Act. It is apparent that this is a complicated debate, riddled with hyperbole and misunderstanding.

Let no one misunderstand, however, the context within which this debate has been conducted. There exists today throughout the West a palpable sense of economic anxiety that has its roots in the issuance of new grazing regulations by the Department of the Interior 2½ years ago; regulations that fueled fear among ranchers that they face a campaign by the Government to permanently remove them from Federal lands.

This apprehension about Government insensitivity to the economic realities of ranching is tangible in my State of South Dakota and widespread throughout the West. Moreover, it has been aggravated by a prolonged period of extremely low cattle prices coupled with record high feed costs.

There is no doubt in my mind, Mr. President, that ranchers' frustration with current Federal grazing policy is justified. Their grievances are both procedural and substantive.

It was apparent that the regulations issued by the Interior Department in 1993 were conceived and issued in a manner that discounted the views of ranchers who earn their livelihood from public land.

Those rules clearly reflect the dominant views and interests of other users, including environmentalists, conservationists, sportsmen and other recreationists. While these groups all have legitimate interests in the quality of Federal land management, the new rules simply do not strike a fair balance among competing uses.

Like the first law of thermodynamics, every political action has a political reaction. The political reaction in the West to the new grazing rules was one of outrage and protest. Many in the ranching community understandably began to demonize these regulations. The legislation we are considering today was conceived in reaction to those rules.

But unlike the laws of physics, in politics the appropriate reaction is not always an equal and opposite reaction. Often a political reaction does not solve problems, but rather only recasts them.

That is the case with S. 1459. And that is why I will oppose the bill, and why I have worked with many of my Western States Democratic colleagues to develop an alternative to it.

The Bingaman substitute solves many problems for ranchers without harming the interests of other users of Federal lands. For grasslands ranchers in South Dakota and elsewhere, it would create a separate management regime apart from the National Forest System—a system that is ill-suited to dealing with the unique requirements of Federal rangeland.

Moreover, the Bingaman substitute overrides the language in the current regulations with respect to the United States Government perfecting all the water rights on Federal land. It places NEPA analysis in its proper perspective, ensuring that agency resources are spent evaluating the impacts of decisions that truly will effect the environment. And, it establishes a realistic fee formula with which ranchers can live.

In other words, the Bingaman substitute addresses the legitimate concerns of ranchers in the West. It represents a better way of addressing prevailing concerns about Federal grazing policy.

I do not question the commitment or motives of my colleagues who developed the committee bill. They have attempted to redress a serious matter through a serious effort. But their product moves Federal policy too far back in the opposite direction to the detriment of other public policy goals.

S. 1459 strikes me as an overreaction to a very real threat to American ranchers. It will not bring us closer to a reasonable and balanced compromise. It will simply shift the equilibrium. If this bill is enacted, I suspect it will not be long before we are back here on the Senate floor debating the same issue from the opposite perspective.

Mr. President, while we need grazing reform, S. 1459 shifts the balance past the sensible middle ground we should be seeking. Let me elaborate.

To begin with, S. 1459 curtails public input beyond what I consider to be reasonable or necessary by restricting the ability of the public to be involved in the development of grazing proposals and to challenge specific decisions.

What does this mean for users of Federal lands: campers, hikers, and scientists to name a few?

It means that those who may know and use the land will have their opportunity for input into the decision-making process restricted, despite the fact that they may be able to offer very credible and useful advice. It means that recreational users will no longer be able to challenge a decision they feel precludes them from having access to lands they have a right to use.

In contrast, Senator BINGAMAN's alternative retains the rights of ranchers and other interested parties to protest management decisions—a provision that exists in current law.

This is a very important point. The opportunity for public comment, protest, and appeal has become one of the most contentious elements in the grazing policy debate.

The history of public involvement by various interest groups has not always been constructive. Appeals and protests have not always been used to offer useful advice or to ensure that decisions are faithful to the letter and spirit of the law. On occasion, they have been used to delay and derail reasonable decisions, sometimes on the basis of flimsy or irrelevant evidence or argument.

Despite this acknowledgment, I am voting today to protect the public's right to comment on decisions that affect the public's lands. The course that some propose—to curtail comment process—is one that I do not feel can be justified by the historical evidence. Only through the unfettered competition of ideas will we be able to ensure development of the very best policies. No process of government should be sheltered by legal artifice from the force of a compelling argument. The management of our public lands demands no less a standard.

I am also concerned that S. 1459 creates an unworkable system for holding title to range improvements. The Bingaman alternative retains the title to permanent range improvements in the name of the United States, while the committee bill would share the title between the United States and the ranchers. Under the substitute, ranchers are compensated for their expenses if they give up the permit or the land use changes and they can no longer graze the land.

Further, S. 1459 restricts the ability of those outside the livestock business to obtain permits for conservation purposes. No longer would a Nature Conservancy be able to obtain permits and rest the land in conservation use. It simply is not fair to prohibit nonlivestock entities from obtaining permits to use Federal lands.

The Bingaman alternative amendment allows anyone meeting basic requirements to obtain permits and rest the land in conservation use. The Nature Conservancy does this with 24 permits now and the Republican bill would curtail this ability.

In addition, S. 1459 significantly restricts the flexibility of the land managers to ensure adequate flows of water on Federal lands. If this proposal is enacted, the Federal Government will no longer be able to protect fish and wildlife populations on Federal lands. Under the substitute, no such punitive restrictions would be imposed.

Taken together, and particularly when read in the context of the objectives of the bill, these provisions persuade me that S. 1459 goes too far in one direction and fails to strike a reasonable balance among the multiple uses of public lands. It is not a solution to favor one group of users of the public lands over another. To manage this resource in a fair and equitable manner, a careful balance must be struck that responsibly addresses the legitimate concerns of all the public land users.

Passage of S. 1459 will not end the debate over grazing in the west. In its current form, this legislation will be vetoed, and that veto will be sustained. Under that scenario, we will not have accomplished anything except to have provided more grist for the political mill.

The Bingaman substitute will not please everyone.

Environmentalists may feel that in some respects it is too generous to the ranching community, while ranchers may feel that it does not adequately insulate them from appeals, protests, red tape and the whims of the Federal Government.

I believe it strikes a fair balance.

The Bingaman substitute will protect the public's right to participate in grazing management decisions. It will ensure that Federal land managers have the authority and flexibility to guarantee sound stewardship of the land and protection of fish and wildlife populations. It will allow conservation organizations the opportunity to obtain permits and rest the land.

In short, Senator BINGAMAN offers a sound, fair, and moderate amendment that will establish security for western ranchers, while genuinely protecting the interests of other users of the land. And, I believe, it can be signed into law.

I sincerely want to resolve this issue—for the permittees and lessees who reside in our States; for the communities that rely on the livestock industry; for the users of the public land; and for the American public in general. The uncertainty surrounding the management of the public lands must be clarified.

I believe the Bingaman approach will allow us to achieve our common goal—healthy public rangelands. I urge my colleagues to support the Bingaman substitute.

Mr. PRESSLER. Mr. President, ever since Department of the Interior Secretary, Bruce Babbitt, proposed Rangeland Reform '94, I have worked with other western Senators to pass meaningful legislation addressing the concerns raised in Secretary Babbitt's proposal. The bill before the Senate is the result of those efforts.

While we were able to postpone implementation of Secretary Babbitt's misguided reforms for some time, Rangeland Reform '94 is now operative. It became effective August 21, 1995. Ranchers are expecting and should get relief from those regulations. We must pass S. 1459.

Ranchers in South Dakota have told me one thing: Rangeland Reform '94 must be changed. Many of those reforms could have a detrimental impact on ranching operations in South Dakota. The Secretary's reforms are shortsighted, weigh in too heavy on the side of environmental extremists and could drive many hard-working ranchers off the land.

Hardest hit would be our young farmers and ranchers. Many have just started ranching on their own. These young farmers and ranchers are our future. They are agriculture's future. Yet they are the ones that could be most hurt if Rangeland Reform '94 is allowed to stand. I have heard from a number of ranchers who are more concerned with Rangeland Reform '94 than they are with low cattle prices. Now that is quite a statement. It clearly shows why this bill must be passed.

The legislation before us today represents nearly 2 years of hard work by many Senators and a vast number of individuals of different interest and professions who are most affected by Federal rangeland policies. I also want to commend the Senate staff who worked to develop our reforms into legislation. They worked late into the night and on weekends.

I do want to note that the bill has been significantly modified since it was first introduced last year. Every effort was made to reach a bipartisan consensus. Over the last 6 months Western States Senators from both sides of the aisle worked hard to reach a compromise that could ultimately be passed.

S. 1459 has bipartisan support and strong support throughout the country. I ask unanimous consent that a letter describing this support be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. PRESSLER. Mr. President, many South Dakota organizations support this bill. First of all it is strongly supported by South Dakota ranchers. It is also supported by the South Dakota Public Lands Council, the South Dakota Farm Bureau, the South Dakota Sheep Growers Association, and the

South Dakota Stock Growers, to name a few.

Let me outline specifically what this bill would do. Under S. 1459:

Ranchers who depend on the use of public lands would be able to continue operating in an economically viable manner.

Multiple-use management objectives would be achieved.

The rights of sportsmen, like hunters and fishers, would be protected and their use of Federal lands would not be restricted.

Water rights for livestock management grazing would be in accordance with State laws.

Local input from virtually every key interest into the management of public lands would be assured.

I urge my colleagues to keep in mind the fundamental goal of the legislation to remove a clearly objectionable rangeland policy.

If left alone, Rangeland Reform '94 will have a detrimental effect on ranching operations in South Dakota. Many of these reforms are short-sighted, take away local input and control, and could drive many ranchers off the land.

It is clear that extreme environmental groups support Rangeland Reform '94 and are waging a baseless scare campaign on S. 1459.

Supporters of Rangeland Reform '94 are spreading the laughable charge that this bill would hurt wildlife and restrict hunting on Federal lands.

I say this is laughable because it simply is not true. All one has to do is read the bill which specifically states:

> Nothing [in this title] shall be construed as limiting or precluding hunting or fishing activities on national Grasslands in accordance with applicable Federal and State laws, nor shall appropriate recreational activities be limited or precluded.

I originally had two important improvements to S. 1459. One was included in the bill and the second I intend to offer as an amendment. South Dakotans made it abundantly clear of the need for local and public input. I worked with Senator DOMENICI on an amendment to require consultation with State, local, and other interests in land-use policies and land-conservation programs for the national grasslands.

All users of Federal lands should have a voice in land-use policies. This added input will provide needed suggestions on better grazing practices that will protect the land and enhance wildlife management.

After discussing this with Senator DOMENICI, my amendment was included in S. 1459 as reported. I thank Senator DOMENICI and Senator CRAIG for working with me on this proposal.

The second improvement is designed to address concerns expressed by sportsmen. South Dakota is probably the best hunting and fishing State in the Nation. I know there may be others who may disagree, but I will gladly promote South Dakota as a sportsmen's haven.

Sportsmen have expressed concerns that S. 1459 could limit use of Federal lands for hunting, fishing, and other recreational purposes. My amendment would reinforce Federal policy to protect the interests of sportsmen who hunt and fish and use our public rangelands for sport. My amendment would preserve the rights of hunters, fishermen, and other sport enthusiasts to use Federal lands.

I hope this amendment can be accepted and made part of the bill.

Mr. President, the Congress needs to pass S. 1459. The bill would address the problems with Rangeland Reform '94, provide needed stability to farmers and ranchers, and help preserve the social, economic, and cultural base of rural communities in the western States. Current use of Federal lands could be greatly restricted in future years without S. 1459. I urge its adoption.

EXHIBIT 1

MARCH 14, 1996.

Hon. LARRY PRESSLER,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR PRESSLER: The undersigned organizations represent the diverse interests of millions of citizens who currently participate in the multiple use of America's public lands. On their behalf, we strongly urge you to support S. 1459, the Public Rangelands Management Act. This bill is the result of innumerable hours of bipartisan negotiations. It fosters balanced multiple use management of our public lands, resource protection and public participation. We have the following reasons for asking your support for this legislation:

The bill maintains widespread public participation in the management of federal lands. For the cost of a postcard, any individual or organization may qualify as an "affected interest" under the bill simply by writing to the Secretary to express concern for the management of grazing on a specific federal grazing allotment. They will then receive notice of and an opportunity for comment and consultation on proposed decisions made by the Secretary of the Interior affecting that particular federal parcel. Public participation extends down to the level of designation of allotment boundaries, development of allotment management plans, increasing or decreasing the use of the land by permittees, issuance and modification of permits and reports evaluating monitoring data applicable to a permit.

The legislation maintains the "multiple use" of public lands. There are those in the environmental community who would have you believe this bill somehow establishes ranching as a dominant use. You need not accept the word of these environmentalists or our word; the legislation speaks for itself. The bill states simply and clearly that "multiple use as set forth in current law has been, and continues to be, a guiding principle in the management of public lands and national forests." Section 102 states that nothing shall affect valid existing rights, reservations, agreements or authorizations. The bill specifically states that nothing in the bill shall be construed as limiting or precluding hunting or fishing activities on federal lands in accordance with applicable federal and state laws, nor shall appropriate recreational activities be limited or precluded. The canard raised by these environmentalists that this bill would somehow lock in current livestock usage levels is simply wrong (see Section 101(a)).

The issue of NEPA compliance is important. The National Environmental Policy Act was well intended for the protection of the environment with regard to major federal actions. Unfortunately, over the decades since its passage, NEPA has been used by obstructionists as a tool to put a stranglehold on any use of federal lands. The statutorily required major federal action has devolved to the digging of a single post hole on federal lands. Everyone familiar with current agency interpretations of NEPA realizes the system is badly broken. The reality is that agency officials are not getting out on the land and monitoring multiple use; they are desk bound by NEPA paper shuffling and the fear of litigation. The NEPA provisions in the bill will protect the environment, restore the original intent of NEPA and free up federal land managers to do their job, all while saving the public money.

The Public Rangelands Management Act is a major cost saver for the federal government. The Congressional Budget Office has scored the new grazing fee formula contained in the bill and determined that enactment would decrease direct federal spending by about $21 million over the 1996 to 2000 period. CBO estimates that offsetting receipts would increase by about $28 million over the same period. The western livestock industry supports this new formula at a time when cattle prices are at a 13 year low. Ranchers are stepping up to the plate and expressing a willingness to pay more during the hard times.

If enacted, S. 1459, the Public Rangelands Management Act will be the first major revision of federal lands grazing activities since the 1934 Taylor Grazing Act. The time has come to restore common sense to the management of the federal lands and to allow ranchers utilizing those lands to continue the production of food and fiber. Support responsible land management, prudent resource conservation and continued multiple use of national lands. Please support S. 1459.

Sincerely,

Agricultural Retailers Association; American Chianina Association; American Farm Bureau Federation; American Forest and Paper Association; American Gelbvieh Association; American Horse Council; American International Charolais Association; American National Cattle Women; American Sheep Industry Association; Arizona Cattle Feeders' Association; Arizona Cattle Growers Association; Arizona Farm Bureau Federation; Arizona State Cowbelles; Arizona Wool Producers Association; Association of National Grasslands; Black Hills Regional Multiple Use Coalition; California Cattlemen's Association; California Farm Bureau Federation; California Public Lands Council; California Wool Growers Association; Cochise Grand Cattle Growers; Colorado Cattlemen's Association; Colorado Cattle Feeders Association; Colorado Farm Bureau; Colorado Public Lands Council; Colorado Woolgrowers Association; Dixie Escalante Rural Electric Association; Empire Sheep Producers, NY; Florida Cattlemen's Association; Gem State Hunters Association; Idaho Cattlemen's Association; Idaho Dairymen's

Association; Idaho Farm Bureau Federation; Idaho Food Producers Association; Idaho Hunters' Association; Idaho Mint Growers Association; Idaho State Grange; Idaho Wool Growers Association; Independent Petroleum Association of America; Indiana Sheep Breeders Association; Iowa State Grange; Kansas Sheep Association; Michigan Cattlemen's Association; Michigan State Grange; Mississippi Cattlemen's Association; Montana Association of Grazing Districts; Montana Farm Bureau Federation; Montana Public Lands Council; Montana Stockgrowers Association; Montana Wool Growers Association; National Association of Counties; National Association of State Departments of Agriculture; National Cattlemen's Beef Association; National Grange; National Lumber and Building Material Dealers Association; National Mining Association; Nebraska Cattlemen; Nevada Cattlemen's Association; Nevada Farm Bureau Federation; New Mexico Farm and Livestock Bureau; North Dakota Lamb & Wool Producers; North Dakota Stockmen's Association; Oregon Cattlemen's Association; Oregon Farm Bureau Federation; Oregon Sheep Growers Association; Ozona Wool & Mohair; Public Lands Council; Regional Council of Rural Counties, California; Rocky Mountain Oil & Gas Association; Roswell Wool, New Mexico; South Dakota Public Lands Council; South Dakota Sheep Growers Association; South Dakota Stockgrowers; Southern Timber Purchaser's Council; Tennessee Cattlemen's Association; Texas Sheep & Goat Raisers Association; Texas & Southwestern Cattle Raisers Association; Utah Cattlemen's Association; Utah Farm Bureau Federation; Utah Wool Growers Association; Utah Wool Marketing; Washington Cattlemen's Association; Washington Farm Bureau; Washington State Grange; Wilderness Unlimited, California; Wyoming Farm Bureau Federation; Wyoming Stock Growers Association; Wyoming Wool Growers Association.

Mr. HATCH. Mr. President, I rise today in support of S. 1459, the Public Rangeland Management Act. I am proud to be a cosponsor of this bill. And, I congratulate Senator DOMENICI and others who have worked so hard to balance the many interests involved in this legislation.

Livestock grazing has always played a major role in our western lifestyle, providing a number of important economic, social, and cultural benefits to all Americans. Utah's rangelands are a renewable resource that can be used and reused without sharing the land. In fact, grazing has become a natural part of the ecological system. A 1990 report from the Bureau of Land Management states that "Public rangelands are in a better condition than at any time in this century." ["State of Public Rangelands 1990," U.S. Bureau of Land Management, emphasis supplied.] This is true because livestock grazers, armed with the latest available knowledge, have become wise users of the resources available to them.

There have been instances in the past of overgrazing to the detriment of the land and the local ecology; today these cases are the exception. Now we hold those who abuse our lands responsible for their actions.

Mr. President, let me state clearly that the Public Rangeland Management Act provides no relief or protection to bad actors on our rangelands. Instead, it reinforces all environmental laws as they relate to grazing on public lands. This is as it should be.

But, Mr. President, I am extremely concerned for the plight of livestock producers in Utah and throughout the United States. I am not aware of any cattle producers in Utah who are making a profit. There are a number of factors contributing to this devastating trend. But when I ask them what we can do to help, they unanimously plead for stability—stability in the fees they are charged and stability in the laws and regulations they must obey.

In Utah most of the livestock producers are small family-owned cattle and sheep operations. An increasing number of these families who have paid for grazing permits on public land, will be unable to afford to use the. They will simply be unable to survive under the difficult regulations promulgated by the Secretary of the Interior known as Rangeland reform 94. Even the possibility that these regulations will be implemented has been sufficient cause for many lenders to hold back their money rather than provide necessary loans to ranchers. Lenders know the business, and they know that Secretary Babbitt's proposal is bad for the industry. Without the necessary credit these families have little hope for survival.

Mr. President, it breaks my heart to watch as families, who have been in the livestock business for generations—in some cases since before Utah became a State—are forced to pull up their stakes and fold up the family business. These families have withstood terrible winters, devastating droughts, the depression, and other economic downturns. But faced with an all powerful, antipathetic Federal Government, their ability to endure is coming to an end.

Considering the serious situation of our livestock industry, one might wonder how far S. 1459 goes to provide for their relief.

Some fear that S. 1459 exempts grazers from some environmental laws. There is absolutely no ground for this fear. The language in this bill could not more clearly reinforce all environmental laws, and it does nothing to impede future changes or additions to current environmental law.

Some who oppose the bill believe it would restrict the use of permitted lands from sportsmen and recreationists. They are dead wrong. Senator DOMENICI went so far as to add an amendment to this bill stating plainly that multiple use of permitted land would not be inhibited in any way. Mr. President, those who continue to criticize the bill for this reason must oppose the idea of grazing on public lands altogether, because it is clear that this concern has been addressed.

Mr. President, even with the difficulty faced by families in the livestock industry, there are still those who argue that we do not raise grazing fees high enough. The truth is that this bill raises grazing fees by 30 to 40 percent from current law, generating millions more revenue for the Treasury than in the past.

These critics point to the higher fees that are charged for forage on private lands. But, there can be little comparison made between grazing on private land and grazing on public land. On one hand, the private landowner must provide all the livestock management services as well as continual forage. Of course private owners charge more, they provide all the necessary services for grazers and must maintain them. On public lands, it is the grazers who are required to install and maintain stock water ponds, fences, and other improvements at their own expense.

Before he was named as Secretary of the Interior, Bruce Babbitt said that "multiple use has run its course."—Public Lands Reform Vital, Denver Post, Mar. 9, 1990. This view is certainly disheartening to use in the West, and I, for one, regret that Secretary Babbitt has set in motion a number of challenges to multiple use. The Rangeland Reform '94 plan is amount the most difficult.

Besides putting grazing fees at a level that is sure to run a host of ranchers off of public lands, Secretary Babbitt's Rangeland Reform '94 proposal would lay down a long list of new standards and regulations that address all public grazing in a one-shoe-fits-all approach. This approach just does not make sense. Every grazing district throughout the country has its own set of challenges and resources that must be dealt with to ensure sustainable use of that area.

S. 1459, the Public Rangeland Management Act, would set into law a framework for managing our lands according to each district's specific needs. And I might add that it would do so while keeping all current environmental protections in full force and effect. This bill would also set into law a fee formula that, although much higher than current law, would provide stability for families in the livestock business and their creditors. Fees should not be set by political appointees who come and go, and who bring with them differing philosophies of public land management.

Again, I commend Senator DOMENICI, Senator MURKOWSKI, and all my colleagues who have worked to develop this compromise legislation. This bill

is long overdue. When this process began the need for these reforms was great. Since then, that need has taken on great urgency. We must pass this bill without delay.

Mr. KEMPTHORNE. Will the Senator from New Mexico yield for a question?

Mr. DOMENICI. I would be pleased to yield for a question.

Mr. KEMPTHORNE. It is my understanding that the grazing bill S. 1459, the Public Rangelands Management Act does not affect the issue of grazing on national parks and national wildlife refuges.

Mr. DOMENICI. The Senator from Idaho is correct.

Mr. KEMPTHORNE. The reason I ask that question is that on many national wildlife refuges, including at least two in my own State, grazing is a traditional use of refuge lands originating in some cases before the land was acquired by the Fish and Wildlife Service.

Mr. DOMENICI. Have grazing rights been continued on those refuges?

Mr. KEMPTHORNE. It has taken a lot of effort to get the administration to admit that grazing rights on the refuges were retained by the previous landowners when the land was transferred to the Fish and Wildlife Service. As things stand right now, there may be room for some optimism that grazing will continue both as a retained right, and as a wildlife management technique.

Mr. DOMENICI. I thank the Senator from Idaho for his observation.

Mr. KEMPTHORNE. I thank the Senator from New Mexico.

Mr. HATFIELD. Mr. President, I support Senator DOMENICI's Public Rangelands Management Act. I had hoped to support a substitute or a series of amendments to address the concerns I expressed in the Energy and Natural Resources Committee meetings. However, we are faced with an amendment that fails to address my concerns and a substitute that goes beyond the changes that I believe we called for in the Domenici bill.

I am concerned with two aspects of S. 1459—public participation and flexible management. We could have done a better job in these two areas.

Affected interests should be consulted and allowed to protest and appeal decisions;

Site-specific NEPA analysis should be allowed when it is determined to be useful; and

A permittee or lessee should not have to be engaged in the livestock business and own base property in order to practice conservation use.

The substitute makes an attempt to address these two areas, but fails in other respects:

It continues to advocate two distinct range management programs, one for the Forest Service and one for the Bureau of Land Management;

It fails to adequately address the water rights issue; and

It does not adequately credit permittees for their rangeland investments.

I oppose the amendment offered by Senators BUMPERS and JEFFORDS for the following reasons:

It would create two classes of rangeland users without improving natural resource management;

It would become an administrative nightmare for the regulatory agencies; and

It is bad policy for Government to "reward" small operators or "penalize" large operators. The goal is to charge a fair fee to all.

I therefore will support Senator DOMENICI's bill. I see it as a reasonable, if flawed, attempt to bring closure to this longstanding issue.

The long and often contentious rangeland management debate reflects the profound ties that we as a Nation feel for our public lands. These ties are more than economic or sentimental. They are true bonds we hold to our Nation's past and its future.

The decades of debate have not been wasted. They have produced information that is leading to new management strategies and cooperation where previously rancor prevailed. We now have an inspiring number of coalitions of ranchers, conservation groups, and State and Federal agencies working together voluntarily to improve rangelands.

In Southeastern Oregon's Trout Creek, for example, permittees are working together with Oregon Trout (a private conservation organization) and State and Federal agencies to improve riparian areas and resolve conflicts between big game and livestock. Their efforts have been very successful in improving range conditions on private, State, and Federal lands.

The Malapai Border Project in my esteemed colleagues' State of New Mexico offers another example of cooperative management. Here, permittees, the Nature Conservancy, and State and Federal officials have come together voluntarily to solve regional ecosystem problems. Through their efforts, we hope to stop the encroachment of brush into grasslands.

These and other examples should encourage us all. The condition of our grasslands is improving and should continue to do so if we work together.

It is interesting to observe the evolution of grazing fee proposals. For years grazing fees provided the hot button for all sides of the argument. Ranchers let us know loud and clear that their fees were high enough. Today, by and large, they support the legislation before us, which would increase the fees. This change of heart reflects a better understanding of the issues and a desire to respond to others' concerns.

We need to capitalize on this spirit and ensure that it grows. It is too easy to focus on remaining differences and go away convinced that they are too great to resolve. If we do this, we will inspire the cooperation necessary to resolve the remaining differences.

It is my hope that my Senate colleagues will work in conference, in cooperation with the House and the administration, to make the adjustments necessary to address my continuing concerns.

Mr. KEMPTHORNE. Mr. President, the final analysis is clear. Rangelands need grazing in order to be healthy. Given that understanding, do we work with the stewards now on the land to improve range health, and find the right balance of grazing? Or do we focus instead on regulations that will have the end result of driving many of those stewards off the range?

The second alternative is unacceptable to me, and should be to all of us here. But under the regulations now in place, that is the direction we are headed. Innovative managers, like conservation award winner Bud Purdy from Picabo, ID, are seeing their children leave a generations-old tradition because of the uncertainty of depending on Federal lands. And this all despite his nationally recognized conservation projects.

We should be encouraging, not discouraging, private enterprise and individual initiative. We should be looking out for the best interests of the public in the long term. Creating vast empty wastelands is not in the best interest of the American public, and it is the responsibility of this body to set policy that will plot the course to protect environmental health and economic stability for rural communities.

Mr. Chairman, as you might have guessed, this debate is a source of great frustration for me. The focus of this Congress, and supposedly of the administration, is to reduce and simplify government, to serve the public better by decreasing overhead cost, reducing needless oversight and review, and improving cooperation with the private sector. But the regulations which the administration implemented last August fly in the face of those goals.

We have to ask ourselves what our priorities are. Ranching is a primary industry across the West. Do we want to tap into the resources that industry has to offer, to encourage conservation and cooperation, to foster stewardship and local management? Or do we want to micromanage from the top down, effectively pulling the rug out from under fragile rural economies?

Mr. President, there are efforts underway as we speak to support rural America. The President is supporting an aggressive rural development program that is being included in the farm bill. But does it make sense to undertake a significant rural development program on the one hand while implementing regulations that will stifle development on the other?

Mr. President, I believe the answer is clear, and further, that Senator DOMENICI's bill is the better path to achieving those goals. I urge my colleagues to support this bill.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. There are no other Senators on our side desiring to speak on this matter. I will speak maybe 3 to 4 minutes.

Mr. President, let us talk a minute about public input into decision-making. Senate bill 1459, as introduced, has been criticized for its provisions regarding public involvement in management decisions regarding grazing activities on Federal lands.

In fact, Mr. President, under the Domenici substitute amendment, public involvement has been expanded. For the first time the public will be given an opportunity to comment on reports by the Secretary of the Interior, and Secretary of Agriculture, summarizing range-monitoring data. The only area where the role of the public has been somewhat diminished is in the area of protests. Let me talk about that a minute.

Under the Domenici substitute, protests cannot be filed by so-called affected interests on very limited types of decisions, such as proposed decisions on applications for grazing permits or leases or relating to terms and conditions of grazing permits or leases or range improvement permits. Other types of protests are allowed, as are appeals of final decisions under the Domenici substitute.

The reason for limiting protests, Mr. President, is very simple: We have found that we need to reduce the potential for filing vexatious and frivolous objections by individuals not even remotely affected by proposed decisions on specific grazing allotments. We want the Government to work better, not worse. We want decisions to be implemented without being protested, then appealed and delayed, and then delayed some more.

Mr. President, the substitute defines an affected interest to include individuals and organizations that have expressed in writing to the Secretary concern for the management of livestock grazing on specific allotments for the purpose of receiving notice and an opportunity for comment and informal consultation on proposed decisions of the Secretary affecting allotments.

As a result of being affected interests, an individual or organization can receive notice of and the opportunity to comment on summary reports of resource conditions as well as proposals and final decisions. They can also appeal final decisions, assuming they have standing to appeal.

If an individual organization is an affected interest, notice of a proposed decision will allow a reasonable opportunity for comment and informal consultation regarding the proposed decision within 30 days, for designation or modification of allotment boundaries, development, revision or termination of allotment management plans, increase or decrease of permitted use, issuance, renewal of transfer of grazing permits, modification of terms and conditions, reports, evaluating monitoring data and the issuance of temporary nonrenewable permits.

In addition to all of the above, Mr. President, public participation occurs in the following areas under this substitute: First, resource advisory councils; second, grazing advisory councils; third, all the FLPMA processes, development of land use plans and amendments thereto.

The NEPA process, where it is used in land use planning, is used to its absolute maximum. It Is also applicable in the development of standards and guidelines.

It is not accurate, nor is it fair, to argue that 1459 or the substitute amendment to it significantly diminishes public participation in management decisions affecting grazing allotments. The intent of our legislation is to ensure fair and frequent public participation by interested individuals, but to curb frivolous and vexatious attempts by outsiders to micromanage—not macromanage, but micromanage—grazing on the public domain from a distance of 2,000 miles away.

In short, our bill attempts to keep those who would file with a 32-cent stamp, from Boston, on a postcard, from spawning administrative and judicial litigation. That brings livestock grazing and economic activity in the West to a halt. This happens with more frequency than you might imagine. We think we have the right amount, which is a very significant amount of public participation, in the right type of decision points.

In some areas, our bill goes further than the Bingaman substitute; in others, it does not go as far. But I believe public participation is maintained in a very broad way and is very significant in this bill.

Mr. President, I have a number of responses in writing that I have written out with reference to other contentions that have been made here on the floor. I do not think, in the interest of time, that I will go through each and every one of them. But there are some significant differences in conservation partnerships that are allowed, cooperative partnerships, than have been stated here on the floor.

The only thing that concerns us and that is epitomized in our bill, is after the land use plan is put together, we do not permit those who would like to get rid of grazing to come in and pick the very best land and say, "We'd like to take all the cattle off. We have enough money to pay for it. We would like to turn it into nothing more than a nongrazing area."

We think there are other, better ways to improve conservation measures without doing that to the public domain. I might indicate that even in States which have a very, very broad-based approach to conservation uses, instead of just pure grazing, this idea of going and picking leases, picking the best of leases and taking them out of grazing and putting them into an exclusive conservation use, has been denied at the State level, not only in New Mexico but in other States.

Mr. President, another criticism of S. 1459 is that it provides for cooperative range improvement agreements with permittees and lessees only. Had Senator BINGAMAN read the Domenici substitute amendment, he would have known that his criticism of S. 1459 is utterly baseless. Section 105(b) directs the Secretary, where appropriate, to authorize and encourage coordinated resource management practices. Such practices shall be for the purposes of promoting good stewardship and conservation of multiple use rangeland resources. And, such practices can be authorized under a cooperative agreement with a permittee or lessee, or an organized group of permittees or lessees.

Language was specifically added at the urging of some conservation groups to provide that such cooperative agreements could include other individuals, organizations, or Federal land users irrespective of the mandatory qualifications required to obtain a grazing permit required by S. 1459 or any other act. This was done so that non-permittee or non-lessee conservation groups could voluntarily make improvements on the public rangelands.

So, Mr. President, contrary to what Senator BINGAMAN claims, a cooperative agreement is not limited to just permittees and lessees. Anyone can enter into a cooperative agreement with a permittee or a lessee and voluntarily make range improvements on grazing allotments.

I hope, Mr. President, that Senator BINGAMAN isn't suggesting that we should discourage or prohibit this type of voluntary rangeland stewardship, because one of the groups that urged us to change section 105 voluntarily makes $3 million in range improvements each year, based on funds raised at dinners and benefits. If Senator BINGAMAN wants to make it the policy of the United States that we should not allow this type of voluntarism, I think our colleagues should be skeptical about supporting his substitute.

Next, Mr. President, it has been said that S. 1459 denies the right of affected interests to protest grazing decisions on public land and national forests by

providing that only an applicant, permittee, or lessee may protest a proposed decision. Again, Senator BINGAMAN should read the Domenici substitute more carefully. Either that, or he must be confused about what the Domenici substitute actually does. Section 151(b) of the Domenici substitute requires the authorized officer to send copies of a proposed decision to "affected interests."

Section 155(b) requires the Secretary to notify "affected interests" of seven different kinds of proposed decisions: first, the designation or modification of allotment boundaries; second, the development, revision, or termination of allotment management plans; third, the increase or decrease of permitted use; fourth, the issuance, renewal, or transfer of grazing permits or leases; fifth, the modification of terms and conditions of permits or leases; sixth, reports evaluating monitoring data for a permit or lease; and seventh, the issuance of temporary nonrenewable use permits.

Section 151(c)(3) states that any notice of a proposed decision to an affected interest must state that "any protest to the proposed decision must be filed not later than 30 days after service."

The only limitation on protests is found in section 152, which states, "an applicant, permittee, or lessee may protest a proposed decision under section 151 in writing to the authorized officer within 30 days after service of the proposed decision."

If there is a limitation on the filing of protests by affected interests, Mr. President, the Domenici substitute does not allow affected interests to file protests on very limited types of decisions, such as proposed decisions on an application for a grazing permit or lease, or relating to a term or condition of a grazing permit or lease or a range improvement permit. Each of these types of issues, Mr. President, involve the contract-like relationship between the permittee or lessee and the United States. In our view, these are the type of decisions that do not warrant armchair quarterbacking and second-guessing by those who want to micromanage livestock grazing on the public lands.

Other types of protests are allowed—as I have already more than adequately explained—as are appeals of final decisions, under the Domenici substitute.

On this one, Mr. President, Senator BINGAMAN is wrong again. So is the Congressional Research Service attorney who analyzed the bill for Senator BINGAMAN.

Next, Mr. President, Senator BINGAMAN claims that under S. 1459 only ranchers would qualify to appeal a final decision affecting the public lands. This is false. Persons who are aggrieved by a final decision of an authorized officer can appeal such a decision, so long as the agency's standing requirements can be met. The same would be true for a judicial appeal of a final agency action.

The reference to the Administrative Procedure Act simply clarifies that a person must actually be aggrieved—actually injured—as set forth in the APA and case law interpreting it. This does not mean that someone whose interest might be affected, or who might suffer some unknown injury at some point in the future can sue.

Mr. President, what we are trying to do here is to eliminate frivolous and vexatious administrative and judicial appeals by those who are not actually adversely affected by a land manager's decision, but who oppose grazing on public lands or have some particular ax to grind.

Senator BINGAMAN seems to think that being an "affected interest" should automatically confer rights to bring administrative or judicial appeals of final decisions. He cites the language in section 154 that states "being an affected interest as described in section 104(3) shall not in and of itself confer standing to appeal a final decision upon any individual or organization."

Mr. President, under the administrative case law of the Interior Board of Land Appeals, a clear distinction has been made as to the appeal rights of "affected interests" as opposed to those "whose interests may be adversely affected." The IBLA has ruled in several cases, Mr. President, that being "deemed" to be an "affected interest" does not automatically confer upon a person a right to appeal. The Interior Department's regulations state that only a person "whose interest is adversely affected by a final decision may appeal to an administrative law judge." (Donald K. Majors, 123 IBLA 142, 146 (1992).)

Mr. President, the Domenici substitute is consistent with the Interior Department's regulations.

Senator BINGAMAN also claims that S. 1459 exempts on-the-ground management from NEPA. NEPA has been eliminated in site-specific situations. He cites a CRS analysis that states that elimination of site-specific analysis is a significant change in current law and procedures. In place of NEPA, S. 1459 proposes a review of resource conditions.

The Domenici substitute states that grazing permit or lease issuance, renewal, or transfer are not "major Federal actions" significantly affecting the environment under NEPA. This will spare the Government the time and expense—1½ years per EIS at a cost of about $1 million per EIS—of doing full-blown EIS' on the more than 20,000 grazing permits and leases on BLM and Forest Service lands.

Also, the Republican substitute places NEPA consideration of grazing activities at the appropriate place: at the land use or forest plan level. The Republican substitute does not trivialize the NEPA process by requiring an EIS for simple decisions such as where to locate a watering tank or whether a fence should be built.

What Senator BINGAMAN and the CRS analysis ignores is that the measure of whether NEPA analysis is done on "site-specific management" is whether "site-specific management"—and it is not clear what Senator BINGAMAN means by this term—constitutes a major Federal action significantly affecting the quality of the environment within the meaning of NEPA. The Bureau of Land Management does not now perform NEPA analysis on grazing permit renewals, so this is not a significant change from current procedures.

Current law does not require NEPA analysis on "site specific management." Current law requires NEPA analysis of major Federal actions significantly affecting the environment. For Senator BINGAMAN to say that S. 1459 eliminates NEPA analysis of site specific management is a gross mischaracterization of the process and of what NEPA requires. And, as I already mentioned, decisions on the location of a stock watering tank or construction of a fence cannot possibly be considered "major Federal actions."

Finally, Mr. President, Senator BINGAMAN is trying to dupe everyone into believing that the Domenici substitute eliminates NEPA analysis of grazing activities, and places instead a simple review of resource conditions. The facts about what the Domenici substitute does are these: first, NEPA analysis would be required at the BLM land use plan—also known as the resource management plan—level and at the Forest plan level. NEPA is not eliminated. Let me repeat—NEPA is not eliminated.

Mr. President, let me just say that the Bingaman substitute would not require the completion of any analysis under NEPA on renewals and transfers unless the Secretary determines that the renewal or transfer would involve significant changes in management practices or use, or that significant environmental damage is occurring or is imminent. Nowhere does the Bingaman substitute specify what "significant" is.

Second, Mr. President, the Domenici substitute would require monitoring of resource condition at an interval of no less than every 6 years. This is not required now. Neither BLM or the Forest Service conduct monitoring with any regularity, if at all.

Third, notwithstanding Senator BINGAMAN's complaints that monitoring data consists of very specific measures of vegetative attributes, or that, in many cases, it is not available, the Domenici substitute will ensure—for

the first time—that adequate monitoring data are available to BLM and the Forest Service. Why is this so important? Because—for the first time—monitoring can help guide the agencies in determining whether grazing activities or land management practices should be changed to protect the public rangelands. The substitute of Senator BINGAMAN would do no such thing.

So, Mr. President, how in the world can Senator BINGAMAN criticize the Domenici substitute?

Last, Mr. President, Senator BINGAMAN claims that, under S. 1459, the public is not given a say in range improvements.

While no specific provision is made in the Domenici substitute for a public say in range improvements—just as the Bingaman substitute does not specifically give the public a role in range improvements—an opportunity for such input would be welcomed through input from the resource advisory councils and grazing advisory councils.

I yield the floor.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me just summarize my response on a few of these areas, and then I think we will have concluded the debate as far as I am aware on this substitute amendment.

I wanted to talk briefly about three issues. First, the NEPA issue that was raised by several of my colleagues, and the difference between our bill and the underlying Senate bill 1459 on NEPA application; second, the opportunity to protest, which Senator DOMENICI was just referring to; then the question that was raised earlier in the debate about why our own substitute did not have a specific provision reserving the right of people to hunt and fish or otherwise use the public lands.

First on NEPA, let me state my understanding of NEPA. The statement I think was made earlier by my colleague that NEPA today is not applied or used in the management of the BLM lands. My understanding is very different, Mr. President. My understanding is the National Environmental Policy Act sets up a procedure which applies to all of the Federal land management agencies and essentially says that when you take an action or make a decision, you need to determine by virtue of the National Environmental Policy Act whether there is an impact, a major Federal impact on the environment.

You can do it one of three ways. If you are fairly confident that there is no impact on the environment to speak of, and it is clear that what you are doing is consistent with decisions you have otherwise made, you can make an administrative determination, and that is in compliance with NEPA, but you are complying with NEPA, as I understand it, by making an administrative determination that nothing more is required. If you think possibly a more serious impact on the environment might be involved you can, instead, make an environmental assessment, and only once you have made an environmental assessment and determined that there will be a significant impact on the environment are you required to do a full-blown environmental impact statement.

Now, whether you do an administrative determination or whether you do an environmental assessment or whether you do the full-blown environmental impact statement, the BLM in this case is complying with NEPA, so the notion that the BLM is not in compliance with NEPA in the way they presently operate and the way they have historically operated is just wrong. In fact, when you look at the CEQ regulations—not the new regulations that Secretary Babbitt promulgated—in the CEQ regulations, it is made very clear that based on regulation 1501.4, based on the environment assessment, the agency will make its determination on whether to prepare an environmental impact statement.

My understanding is that the BLM did comply with that. In most cases they determine that they should do an environmental assessment before renewing leases. We are trying to address that in our substitute, as I have explained here, and I think everybody concedes we are saying that NEPA should not apply when you are just renewing a lease, when you are just renewing a permit, unless there is some evidence that there is a change in the management or some evidence that there is danger to the land involved or to the environment. That is the first point on NEPA.

On the opportunity to protest, under our bill, under this proposed substitute we are offering, the department will determine whether or not a particular group or person is an affected interest. Not everybody who writes in or contacts the department is necessarily an affected interest. If a third-grade class in Hartford, CT, wants to write and they say they are an affected interest on the land in a ranch in New Mexico, it is very doubtful that any Secretary would determine that they were an affected interest under the language of our substitute. We have made it clear that the Secretary is given discretion as to look at whether or not a group is, in fact, affected.

If they are affected, we provide they have an opportunity to protest. Now, the CRS report, which I know some are critical of, let me state I think they make a very good point here. They say a protest is similar to a predecisional appeal that gives the public an opportunity to object to a proposal, gives the agency an opportunity to change or modify its course before committing itself to a final course of action.

That is all we are saying. We are not saying that someone should have legal rights as such, except to state their position and do so at a stage in the process before a final decision is made. That is not permitted under the underlying bill. It is permitted in our substitute. I think, clearly, it should be permitted.

Again, it should be permitted for those who are determined to be affected interests—not for the so-called interested public, which is what the current Department of Interior regulations refer to. We have corrected that. We agree that is an overly broad category, the interested public. So we have said in the case of an affected interest, if you are determined to be an affected interest you should have a right to protest before they finalize the decision.

The other area I wanted to particularly point out, I know my colleague had said that someone could raise an objection to our bill on the grounds that we did not specify that hunting and grazing are, in fact, permitted. Well, we did not. I point out that the reason we did not is that in our bill we made it very clear that our legislation is not an amendment to all of the different statutes that are being amended in the underlying legislation. The underlying legislation, by its very language, section 102, page 5, says,

> The Act applies to the Taylor Grazing Act, Federal Land Policy Management Act, Public Range Improvement Act, Organic Administration Act of 1897, the Multiple Use Sustained Yield Act of 1960, the Forest and Rangeland Renewable Resource Planning Act, the National Forest Management Act.

Since they are saying that all of those acts are modified or changed to the extent necessary by this, they then have to come back later in that same section 102, and say nothing in this title shall limit or preclude the Federal language from being used for hunting, fishing, recreation, watershed management, et cetera.

We did not have that same proviso in there because we are not affecting those acts. Nothing in our bill affects those earlier acts. We are proposing very limited statutes which have the effect of correcting regulatory provisions that we had concerns about. That is a basic reason why we did not repeat that same provision that the Senator from New Mexico has in his earlier bill.

I gather he wants to speak in response to that.

Mr. DOMENICI. I just wanted to say, Senator, and ask you if you would turn to the section called Applications of the Act on page 5. It says, "This act applies to," and then it says, "(1) the management of grazing on Federal land by the Secretary of Interior under * * *." So it is the management of grazing as affected by these acts.

All I said about your failure to include the provision was that somebody,

if they wanted to treat your bill like they have treated my bill, would say, why does it not have in that language that says it in no way would affect, and all I said was somebody might write—since that is not there, maybe it affects them in some adverse way.

I do not believe with that language which says "grazing on Federal land," that we are changing these acts. It is the management of grazing on Federal land.

Mr. BINGAMAN. Mr. President, let me respond that there are a great many groups and individuals around the country very concerned about preserving hunting and fishing rights. To my knowledge, none of them have raised concerns about whether our legislation impinges upon those or our proposed substitute impinges upon those rights, or fails to adequately protect those rights. I think those concerns have been raised about the underlying bill. Senate bill 1459, not about our substitute. So I think this is a problem which is not real, in my view.

Mr. President, I will conclude my comments by just going back to the basic point that I think needs to be understood by our colleagues. In putting together our substitute, which we are getting ready to vote on, we sent a letter to my colleague, Senator DOMENICI, in September of last year. It was signed by myself, Senators DORGAN, DASCHLE, BRYAN, and REID, all five of us, who have spoken here on this issue. We sent a letter saying that, in our view, the only way we should go forward and develop legislation that would do what needs to be done here is to identify the problems that exist in the new grazing regulations and then legislate corrections to those, legislate solutions to those, correct the specific problems that have been pointed out. Do not go beyond that and create new problems.

I believe that we have done that in the substitute. We have tried to strike a balance between those who graze the land, the authority of those who graze the land, and the authority of those who want to use the land for other purposes. I believe that balance is very important to maintain. I fear that the underlying bill gives us an imbalance, which we will be back here trying to correct in future years, if the underlying bill were to become law. With that, I believe we have concluded debate on this.

I yield the floor.

Mr. DOMENICI. Mr. President, before I move to table the Bingaman amendment, I want to say to Senator BINGAMAN, and other Senators who have worked with him on that side of the aisle, obviously, even with reference to the Domenici amendment, your work has not been in vain because we changed it rather dramatically in response to various meetings we held with Senator BINGAMAN, and the other Senators he mentioned. A number of changes have been made since he suggested them, and the major one was made because of a suggestion Senator BINGAMAN made—that we not provide by statute to wipe out all of the regulations and say these are the regulations. We left many of the old regulations in place, which he recommended we do. I thought that was a major change. That it reduced the bill by two-thirds in length, if nothing else, should be good. Many of us think we ought to have fewer words rather than more. In many areas we have complimented their efforts.

We believe that the Domenici amendment will create the balance, and that it will create more of a certainty for the ranching community to continue to exist. At the same time, it will protect all the other interests.

With that, Mr. President, I move to table the Bingaman amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER (Mr. BURNS). 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 amendment.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from New Hampshire [Mr. GREGG] is necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

The result was announced—yeas 57, nays 40, as follows:

[Rollcall Vote No. 49 Leg.]

YEAS—57

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Baucus	Gramm	McConnell
Bennett	Grams	Murkowski
Bond	Grassley	Nickles
Brown	Hatch	Pressler
Burns	Hatfield	Roth
Campbell	Heflin	Santorum
Chafee	Helms	Shelby
Coats	Hutchison	Simpson
Cochran	Inhofe	Smith
Cohen	Inouye	Snowe
Coverdell	Jeffords	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
DeWine	Kohl	Thompson
Dole	Kyl	Thurmond
Domenici	Lott	Warner
Faircloth	Lugar	Wyden

NAYS—40

Akaka	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Glenn	Murray
Boxer	Graham	Nunn
Breaux	Harkin	Pell
Bryan	Hollings	Pryor
Bumpers	Johnston	Reid
Byrd	Kennedy	Robb
Conrad	Kerry	Rockefeller
Daschle	Lautenberg	Sarbanes
Dodd	Leahy	Simon
Dorgan	Levin	Wellstone
Exon	Lieberman	
Feingold	Mikulski	

NOT VOTING—3

Bradley	Gregg	Kerrey

So the motion to lay on the table the amendment (No. 3559) was agreed to.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. DOLE. As I understand it, there is a request for the yeas and nays on final passage.

Mr. PRESSLER. Mr. President, I still have an amendment.

Mr. DOMENICI addressed the Chair.

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

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

The motion to lay on the table was agreed to.

Mr. DOLE. As I understand it, the Senator from South Dakota has an amendment.

Mr. DOMENICI. We are going to fix that right now and then vote on it.

Mr. DOLE. There has also been a request for final passage on the Taiwan resolution which has been agreed to. That can be the second vote, and then everybody can vote and leave.

UNANIMOUS-CONSENT AGREEMENT—HOUSE JOINT RESOLUTION 165

Mr. DOLE. Mr. President, I also ask unanimous consent at this time that when the Senate receives from the House House Joint Resolution 165, the continuing resolution, it be deemed considered read three times, passed, and the motion to reconsider be laid upon the table, all without any intervening action or debate.

The PRESIDING OFFICER. Is there objection to the majority leader's request?

The Chair hears none, and it is so ordered.

ORDER OF PROCEDURE

The PRESIDING OFFICER. Is there a sufficient second on the yeas and nays on final passage of S. 1459, the grazing bill?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. And on Taiwan.

The PRESIDING OFFICER. And on Taiwan? Without objection, it is so ordered.

The yeas and nays were ordered.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DOMENICI. Could we have a bit of order.

The PRESIDING OFFICER. May we have order, please. All conversations should be removed to the cloakrooms.

AMENDMENT NO. 3560 TO AMENDMENT NO. 3555

(Purpose: Amendment To make clear the intent of title II to preserve sporting activities on the National Grasslands)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows.

The Senator from South Dakota [Mr. PRESSLER] proposes an amendment numbered 3560 to amendment No. 3555.

Mr. PRESSLER. 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:

In section 202(a)(3), after "preserving" insert "sporting,".

In section 202(b), strike "hunting, fishing, and recreational activities" and insert "sportsmen's hunting and fishing and other recreational activities".

In section 205(f), strike "HUNTING, FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities" and insert "SPORTSMEN'S HUNTING AND FISHING AND OTHER RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding sportsmen's hunting or fishing activities".

Mr. PRESSLER. Mr. President, my amendment is designed to address a concern expressed by sportsmen in South Dakota. South Dakota is probably the best hunting and fishing State in the Nation. I know there may be others who may disagree, but I will gladly promote South Dakota as a sportsman's haven.

Mr. WELLSTONE. I object.

Mr. DOMENICI. Could we have order, Mr. President.

The PRESIDING OFFICER. Could we have order. And the Chair will withhold comment.

Mr. PRESSLER. Mr. President, this amendment reinforces Federal policy to protect the interests of sportsmen who hunt and fish and use our public rangelands for sport. My amendment would preserve the rights of hunters, fishermen and recreationalists to use Federal lands.

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

Mr. PRESSLER. I will yield.

Mr. FORD. The longer the Senator talks, the less chance this amendment has of passing.

Mr. DOMENICI. I thank the Senator.

Mr. PRESSLER. Mr. President, I hope this amendment can be accepted and made a part of the bill.

Mr. DOMENICI addressed the Chair.

Mr. President, I wonder if the Senator would agree for a moment to set his amendment aside.

Mr. PRESSLER. I will.

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

MODIFICATIONS TO AMENDMENT NO. 3555

Mr. DOMENICI. I send to the desk a Pressler amendment and two other technical amendments in behalf of Senator CAMPBELL and Senator DORGAN and one in behalf of Senator BURNS. They have been approved by Senator BINGAMAN in behalf of the minority. I send them to the desk and ask that my amendment be modified to include those amendments.

The PRESIDING OFFICER. Without objection, the underlying amendment is so modified.

The modifications are as follows:

In section 202(a)(3), after "preserving" insert "sporting,".

In section 202(b), strike "hunting, fishing, and recreational activities" and insert "sportmen's hunting and fishing and other recreational activities".

In section 205(f), strike "HUNTING, FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities" and insert "SPORTSMEN'S HUNTING AND FISHING AND OTHER RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding sportsmen's hunting or fishing activities".

On page 7, line 7, strike paragraph (7) in its entirely and insert a new paragraph (7) as follows:

"(7) maintain and improve the condition of Federal land for multiple-use purposes, including but not limited to wildlife and habitat, consistent with land use plans and other objectives of this section. "

On page 9, line 10, after "Service" insert' "in the 16 continguous Western States".

On page 21, line 17, strike "and" and insert in lieu thereof "or".

On page 21, line 21, strike "A grazing permit or lease shall reflect such ", and insert in lieu thereof "The authorized officer shall ensure that a grazing permit or lease will be consistent with appropriate".

On page 18, line 23, strike "or" and insert in lieu thereof "and".

On page 6, strike the present text in lines 9–13 and insert in lieu thereof the following: "Nothing in this title shall affect grazing in any unit of the National Park System, National Wildlife Refuge System or on any lands that are not federal lands as defined in this title."

On page 13, line 22: add the following subsection:

"(4) State Grazing Districts established under state law."

On page 29, line 20: add the following subsection:

"(i) STATE GRAZING DISTRICTS.—Resource Advisory Councils shall coordinate and cooperate with State Grazing Districts established pursuant to state law."

On page 31, line 13: add the following subsection:

"(f) STATE GRAZING DISTRICTS.—Grazing Advisory Councils shall coordinate and cooperate with State Grazing Districts established pursuant to state law."

AMENDMENT NO. 3560 WITHDRAWN

Mr. PRESSLER. Mr. President, I withdraw my amendment.

Mr. DOMENICI. Senator PRESSLER has withdrawn his amendment.

Mr. President, I believe we are ready for final passage. Is that correct?

AMENDMENT NO. 3555, AS MODIFIED

The PRESIDING OFFICER. If there is no objection, the substitute amendment is agreed to.

The amendment (No. 3555), as modified, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

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

UNANIMOUS-CONSENT AGREEMENT—HOUSE CONCURRENT RESOLUTION 149

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, on behalf of the leader, who did not read the unanimous-consent request, I ask unanimous consent that following the vote on passage of S. 1459, the grazing bill, the Senate proceed immediately to the consideration of House Concurrent Resolution 149 regarding Taiwan, with Senator Thomas to be recognized to offer an amendment, the amendment be considered agreed to, and the Senate immediately vote on adoption of House Concurrent Resolution 149, as amended.

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

Mr. DOMENICI. I thank the Chair.

VOTE

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass. 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 New Hampshire [Mr. GREGG] is necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

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

The result was announced—yeas 51, nays 46, as follows:

[Rollcall Vote No. 50 Leg.]

YEAS—51

Abraham	Frist	Mack
Ashcroft	Gorton	McCain
Baucus	Gramm	McConnell
Bennett	Grams	Moynihan
Bond	Grassley	Murkowski
Brown	Hatch	Nickles
Burns	Hatfield	Pressler
Campbell	Heflin	Santorum
Coats	Helms	Shelby
Cochran	Hutchison	Simpson
Conrad	Inhofe	Smith
Coverdell	Johnston	Specter
Craig	Kassebaum	Stevens
D'Amato	Kempthorne	Thomas
Dole	Kyl	Thompson
Domenici	Lott	Thurmond
Faircloth	Lugar	Warner

NAYS—46

Akaka	Feinstein	Moseley-Braun
Biden	Ford	Murray
Bingaman	Glenn	Nunn
Boxer	Graham	Pell
Breaux	Harkin	Pryor
Bryan	Hollings	Reid
Bumpers	Inouye	Robb
Byrd	Jeffords	Rockefeller
Chafee	Kennedy	Roth
Cohen	Kerry	Sarbanes
Daschle	Kohl	Simon
DeWine	Lautenberg	Snowe
Dodd	Leahy	Wellstone
Dorgan	Levin	Wyden
Exon	Lieberman	
Feingold	Mikulski	

NOT VOTING—3

Bradley	Gregg	Kerrey

So the bill (S. 1459), as amended, was passed.

The text of the bill will be printed in a future edition of the RECORD.

Mr. DOMENICI. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. DOMENICI. Mr. President, I wish to acknowledge the following staff for their important contribution to the passage of S. 1459, and I ask unanimous consent that their names be printed in the RECORD.

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

Charles Gentry and Gary Ziehe of Senator DOMENICI's staff.

Energy Committee Majority Staff: Gary Ellsworth, Jim Bierne, Mike Poling, and Jo Meuse.

The personal staff of the following members:

Dan Naatz—Senator THOMAS.
Ric Molen—Senator BURNS.
Nils Johnson—Senator CRAIG.
Rhea Suh—Senator CAMPBELL.
Kevin Cook and Greg Smith—Senator KYL.

Energy Committee Minority Staff: David Brooks and Tom Williams.

The personal staff of the following members:

Damon Martinez—Senator BINGAMAN.
Eric Washburn—Senator DASCHLE.
Mike Eggl and Doug Norrell—Senator DORGAN.
Bret Heberle—Senator BRYAN.
Bob Barbour and Peter Arapis—Senator REID.
Bryan Cavey and Kurt Rich—Senator BAUCUS.
Kevin Price—Senator CONRAD.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

DOMESTIC VIOLENCE HOTLINE

Mr. WELLSTONE. Mr. President, if I could just say this. I announced last week that as a part of the Violence Against Women Act we now have a national domestic violence hotline. Senator BIDEN, of course, did so much work on this, as did many others. Every day I come out and show this. It is 1-800-799-SAFE; and the TTD number for the hearing-impaired is 1-800-787-3224.

Mr. President, I spoke about this issue last week. But every day I want to announce this number for women and children and those who need to make this call. I thank the Chair.

EXPRESSING THE SENSE OF THE CONGRESS THAT THE UNITED STATES IS COMMITTED TO MILITARY STABILITY IN TAIWAN STRAIT

The PRESIDING OFFICER. The clerk will report the concurrent resolution.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 148) expressing the sense of the Congress that the United States is committed to military stability in Taiwan Strait and the United States should assist in defending the Republic of China (also known as Taiwan) in the event of invasion, missile attack, or blockade by the People's Republic of China.

The Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

AMENDMENT NO. 3562

(Purpose: To amend the resolution)

Mr. THOMAS. Mr. President, I send to the desk an amendment.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wyoming [Mr. THOMAS] for himself, Mr. HELMS, Mr. DOLE, Mr. MURKOWSKI, Mr. PELL, Mr. SIMON, Mr. MACK, Mr. GRAMS, Mr. PRESSLER, Mr. BROWN, Mr. LUGAR, Mr. D'AMATO, Mr. WARNER, Mr. FORD, Mr. LIEBERMAN, Mr. ROTH, Mr. NICKLES, Mr. HATCH, Mr. GORTON, Mr. CRAIG, Mr. SANTORUM, Mr. DORGAN, Mr. ROBB, Mr. ROCKEFELLER, Mr. BRYAN, and Ms. MOSELEY-BRAUN proposes an amendment numbered 3562.

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

The amendment is as follows:

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

"That it is the sense of the Congress—

"(1) to deplore the missile tests and military exercises that the People's Republic of China is conducting from March 8 through March 25, 1996, and view such tests and exercises as potentially serious threats to the peace, security, and stability of Taiwan and not in the spirit of the three United States-China Joint Communiqués;

"(2) to urge the Government of the People's Republic of China to cease its bellicose actions directed at Taiwan and enter instead into meaningful dialogue with the Government of Taiwan at the highest levels, such as through the Straits Exchange Foundation in Taiwan and the Association for Relations Across the Taiwan Strait in Beijing, with an eye towards decreasing tensions and resolving the issue of the future of Taiwan;

"(3) that the President should, consistent with section 3(c) of the Taiwan Relations Act of 1979 (22 U.S.C. 3302(c)), immediately consult with Congress on an appropriate United States response to the tests and exercises should the tests or exercises pose an actual threat to the peace, security, and stability of Taiwan;

"(4) that the President should, consistent with the Taiwan Relations Act of 1979 (22 U.S.C. 3301 et seq.), reexamine the nature and quantity of defense articles and services that may be necessary to enable Taiwan to maintain a sufficient self-defense capability in light of the heightened military threat; and

"(5) that the Government of Taiwan should remain committed to the peaceful resolution of its future relations with the People's Republic of China by mutual decision."

Amend the preamble to read as follows:

"Whereas the People's Republic of China, in a clear attempt to intimidate the people and Government of Taiwan, has over the past 9 months conducted a series of military exercises, including missile tests, within alarmingly close proximity to Taiwan;

"Whereas from March 8 through March 15, 1996, the People's Republic of China conducted a series of missile tests within 25 to 35 miles of the 2 principal northern and southern ports of Taiwan, Kaohsiung and Keelung;

"Whereas on March 12, 1996, the People's Republic of China began an 8-day, live-ammunition, joint sea-and-air military exercise in a 2,390 square mile area in the southern Taiwan Strait;

"Whereas on March 18, 1996, the People's Republic of China began a 7-day, live-ammunition, joint sea-and-air military exercise between Taiwan's islands of Matsu and Wuchu

"Whereas these tests and exercises are a clear escalation of the attempts by the People's Republic of China to intimidate Taiwan and influence the outcome of the upcoming democratic presidential election in Taiwan;

"Whereas through the administrations of Presidents Nixon, Ford, Carter, Reagan, and Bush, the United States has adhered to a "One China" policy and, during the administration of President Clinton, the United States continues to adhere to the "One China" policy based on the Shanghai Communiqué of February 27, 1972, the Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China of January 1, 1979, and the United States-China Joint Communiqué of August 17, 1982;

"Whereas through the administrations of Presidents Carter, Reagan, and Bush, the United States has adhered to the provisions of the Taiwan Relations Act of 1979 (22 U.S.C. 3301 et seq.) as the basis of continuing commercial cultural, and other relations between the people of the United States and the people of Taiwan and, during the administration of President Clinton, the United States continues to adhere to the provisions of the Taiwan Relations Act of 1979;

"Whereas relations between the United States and the People's Republic of China rest upon the expectation that the future of Taiwan will be settled solely by peaceful means;

"Whereas the strong interest of the United States in the peaceful settlement of the Taiwan question is one of the central premises of the three United States-China Joint Communiqués and was codified in the Taiwan Relations Act of 1979;

"Whereas the Taiwan Relations Act of 1979 states that peace and stability in the Western Pacific "are in the political, security, and economic interests of the United States, and are matters of international concern";

"Whereas the Taiwan Relations Act of 1979 states that the United States considers "any effort to determine the future of Taiwan by other than peaceful means, including by boycotts, or embargoes, a threat to the peace and security of the western Pacific area and of grave concern to the United States";

"Whereas the Taiwan Relations Act of 1979 directs the President to "inform Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom";

"Whereas the Taiwan Relations Act of 1979 further directs that "the President and the Congress shall determine, in accordance with constitutional process, appropriate action by the United States in response to any such danger";

"Whereas the United States, the People's Republic of China, and the Government of Taiwan have each previously expressed their commitment to the resolution of the Taiwan question through peaceful means; and

"Whereas these missile tests and military exercises, and the accompanying statements made by the Government of the People's Republic of China, call into serious question the commitment of China to the peaceful resolution of the Taiwan question: Now, therefore, be it."

Amend the title so as to read: "Expressing the sense of Congress regarding missile tests and military exercises by the People's Republic of China.".

Mr. THOMAS. Mr. President, under the order I believe we are to vote. I ask unanimous consent for 2 minutes—1 minute for the Senator from Alaska, 1 minute for the Senator from Louisiana.

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

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I am pleased the Senate will vote on this timely issue regarding the current situation in the Taiwan Strait. I am referring, of course, to the military action by the People's Liberation Army to intimidate the people of Taiwan on the eve of the first Democratic, direct election of their President.

The executive branch has criticized, correctly, the military exercises. The administration has backed up its words by sending a naval presence to monitor the exercises in the Taiwan Strait. The House has passed its own resolution. It is time for the U.S. Senate to also go on record deploring the military threat of the People's Republic of China, and recommitting the United States to the terms and conditions of the Taiwan Relations Act.

Senator THOMAS, the majority leader, Senator HELMS, and I, along with our staffs, have been in close consultation with the administration and with our colleagues on the other side of the aisle to address their concerns, and am pleased that we have crafted a compromise that will have broad bipartisan support. I think it is important for the leaders of the People's Republic of China to understand that America is united in maintaining the historical commitments we have made to Taiwan.

The Taiwan Relations Act clearly states that peace and stability in the Western Pacific are in the political, security, and economic interests of the United States, and makes clear that U.S. policy is to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic interests of the United States.

The amendment we have offered makes five important points. First, the amendment directs the President to consult with the Congress, as required by the Taiwan Relations Act, when it is determined that there is a threat to the security or the social or economic system of the people of Taiwan.

I do not believe this threshold has been met, both because the People's Republic of China ended the missile tests as scheduled on March 15 and one of its naval exercises on March 20 and because the People's Republic of China has indicated that it does not plan to attack Taiwan. We will have to wait and see if their actions match their words.

Second, the amendment directs the President and Congress, as required by the Taiwan Relations Act, to reexamine the nature and quantity of defense articles and services that may be necessary to enable Taiwan to maintain a sufficient self-defense capability in light of the heightened threat. The purpose of this commitment, of course, is to deter China from considering any type of attack.

I am pleased that United States officials and officials from the Republic of China met this week to discuss additional sales of necessary defensive weapons. I hope the approved list is sufficient to maintain their self-defensive capability. I wonder, for example, whether the Patriot system that is scheduled for delivery in late 1997 is timely or adequate given the recent missile tests?

Third, the amendment deplores the missile tests and other military exercises that have the potential to disrupt air and shipping routes. The missile tests resulted in four unarmed warheads falling in waters near Taiwan's northern and southern ports. The naval exercises using live ammunition encroach upon international shipping lanes. These actions call into question the commitment of the People's Republic of China to the peaceful resolution of the future of Taiwan.

Fourth, the amendment calls on the People's Republic of China to cease its threats, and instead enter into a constructive dialog with the Government of the Republic of China on Taiwan, perhaps through their informal organizations, the Straits Exchange Foundation in Taiwan and the Association for Relations Across the Taiwan Straits in Beijing. In the past, these two organizations have dealt with many other issues between the two countries, from fishing to highjackers, and have helped fuel the enormous investment in mainland China by Taiwanese investors, estimated at some $20 billion.

Finally, the amendment notes that the Government of the Republic of China should remain committed to the peaceful resolution of its future relations with the People's Republic of China by mutual decision, consistent with government policy.

Mr. President. I do not believe that China is on the verge of attacking Taiwan. I also do not believe that China's scare tactics will have their intended affect on Taiwan. When the roar of the military tests have subsided, and the last vote is counted in Taiwan, I hope the two sides will pursue a course of constructive dialog. Until the time, the United States must maintain its vigilance and monitor events in the Taiwan Strait.

Before I conclude, Mr. President, I want to comment on one issue that is related to the debate surrounding this resolution, an that is Congress' role in the visit of President Lee Teng-hui to his alma mater. There are some who have blamed that visit, and Congress' role in bringing about that visit, for the current crisis. Mr. President, that is simply not the case. I would refer my friends to a recent op-ed in the New York Times by Christopher Sigur that points out that it was not that visit, but the prospect of democracy in Taiwan, that has so upset the leaders in Beijing.

As Mr. Sigur notes, until recently, both China and Taiwan had implicitly recognized the island's de facto independence and dealt with it peacefully. They negotiated Taiwan's participation in numerous international institutions, from the Asian Development Bank and the Asia Pacific Economic Cooperation forum to the Olympics by sidestepping the independence question.

But as Taiwan moved closer to a full fledged democracy with the December parliamentary elections and the March Presidential elections, Beijing's leaders saw the island moving toward a less predictable future, because, of course, in a democracy, there will be many different voices that the leadership must accommodate.

All of this came at a time when Beijing is preparing to take over Hong Kong and thus test Chairman Deng's "One Country, Two Systems" proposition. In addition, the leadership in Beijing is still in transition as Chairman Deng fades from the scene.

Finally, Mr. President, I would argue that our own administration contributed to hardening the People's Republic of China's reaction to a private visit by Lee Teng-hui by not issuing the visa initially and assuring Beijing that this private visit did not constitute a departure from the "One China" policy. Instead, Secretary of State Christopher told President Jiang Zemin that such a visit would not occur, and therefore caused the President to lose face when the decision was reversed.

The United States was right to allow President Lee to return to his alma mater. The United States is right to continue to sell defensive weapons to Taiwan. And the United States is right to go on record deploring the recent missile tests and military exercises. Although these actions are condemned by the People's Republic of China they are consistent with United States policy under the four joint communiques

with the Peoples Republic of China and the Taiwan Relations Act, the law of the land.

Mr. President, China must understand that missile diplomacy does not work. This amendment sends that message, and I ask my colleagues for their support.

Mr. President, I ask unanimous consent that the New York Times article, as well as a recent op-ed I authored in the Wall Street Journal entitled "What We Owe Taiwan" be printed in the RECORD.

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

WHY TAIWAN SCARES CHINA

(By Christopher J. Sigur)

In the debate over China's military exercises in the Taiwan Strait, few have discussed a fundamental reason for its actions: Taiwan's emerging democracy. China's main concern is not any movement toward independence but rather the effects of Taiwanese democracy on the island's foreign policy.

Until recently, both China and Taiwan had implicitly recognized the island's de facto independence and dealt with it peacefully. They negotiated Taiwan's participation in numerous international institutions, from the International Monetary Fund to the Olympics, by sidestepping the independence question. China tolerated Taiwan's efforts to open embassies abroad. But the military exercises in the strait show that this implicit understanding is in tatters.

What has changed? With its first-ever direct presidential elections on Saturday, Taiwan will become a full-fledged democracy.

President Lee Teng-hui's controversial visit to Cornell University last summer was a symptom of Taiwanese democracy. To stay in power in a democracy, of course, one must respond to the opposition's views. The opposition in Taiwan does not want reunification with the mainland and has increasingly demanded international recognition of the island. Hence, President Lee's campaign to rejoin the United Nations, his trips to Asia, Latin America and Europe (which have been termed "vacation diplomacy") and the push to have Congress grant him a United States visa.

It is naive to think that if only Mr. Lee had chosen not to go to Cornell, if only he had not offered the United Nations a $1 billion gift in an apparent attempt to gain a seat, China would not be acting so belligerently.

Beijing's leaders recognize that Mr. Lee's actions are prodded by democracy and it horrifies them. China's state newspapers often refer to Taiwan's "demands for independence in the guise of democratization," clearly linking one with the other.

What the People's Republic sees across the strait is a China whose people are ready to choose their own leaders, with all the demands that makes on a political system: regularly scheduled elections, a free press and political parties that must take their opponents' ideas seriously, because you never know who will be in power tomorrow. Beijing is not prepared to accept this model in Taiwan or on the mainland.

Thus, even if Mr. Lee renounced Taiwan's United Nations bid, canceled all his overseas trips and closed his country's few embassies, both he and Beijing would recognize that the moves are meaningless. Democracy institutionalizes uncertainty, and neither Beijing nor Taiwan could predict how the voters would react. China may not have liked seeing Taiwan under the firm grip of the Nationalists for the last four decades, but at least they were predictable.

The United States must recognize that it has a fundamental interest in promoting Chinese democracy, and in protecting its sole example in Taiwan. Thus, we must warn China in no uncertain terms that we will not sit idly by if Taiwanese democracy is threatened, encouraged our allies to make similar declarations and continue to back up our words with a show of American naval power.

Democracy's uncertainties will only increase the threats to the security and economic stability of the entire region. The United States is vital to any long-term solution. The Chinese on both sides of the strait are unlikely to reach a solution unless Washington keeps them talking.

WHAT WE OWE TAIWAN

(By Frank Murkowski)

President Nixon must be spinning in his grave.

When he first opened relations with Beijing some 20 years ago, Nixon believed that Asia could not progress if China remained isolated. His actions promised to help that country enter into a new and constructive relationship with the rest of the modern world. But Beijing's recent self-defeating actions can only turn back the pages of history and cripple China's economic progress.

Beijing's decision to start missile tests near Taiwan—and it is to be hoped nothing worse—effectively imposes a miniblockade of Taiwan's two major ports prior to Taiwan's first free presidential elections on March 23. The tests, while probably intended to affect the election, have ramifications beyond the Taiwan Strait.

For that reason, Sen. Craig Thomas (R., Wyo.) and I have introduced in the Senate a resolution recommitting us to the Taiwan Relations Act of 1979, which clearly states that America believes that peace and stability in the area are in the "political, security and economic interests of the United States."

The Taiwan Relations Act, which is the law of the land, commits the U.S. to "resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people of Taiwan."

We must remind Beijing that the decision of the U.S. to establish diplomatic relations with China was "based upon the expectation that the future of Taiwan will be determined by peaceful means."

Some China-watchers are inclined to rationalize Beijing's behavior. Apologists have blamed China's belligerence on the firm stands taken by Congress. But today it is clear that China, not Congress, is to blame for the current state of U.S.-China relations. Time and again, before and after the 1989 Tiananmen Square attack on student protesters, China's rulers have shown themselves to be almost oblivious to the fact that a larger world—one that is sensitive to human rights concerns, capable of helping improve China's quality of life, and with a firm belief in religious and political freedom—exists beyond the borders of the People's Republic of China.

President Jiang Zemin and his lieutenants must understand that this is why the U.S. finds China's missile diplomacy unacceptable. We support the peaceful settlement of differences between China and Taiwan, and cannot idly watch a peaceful, democratic ally be threatened—and certainly not attacked militarily.

We must, furthermore, continue selling Taiwan defense weapons to help counter any thoughts China might have of using military force against the island. Along with these weapons, we must let the leaders in Beijing know that threats are useless as tools of foreign policy and are the rusted relics of diplomacy from a bygone and dangerous era.

China's leaders must know that economic gains will evaporate if continued military threats (or worse) create havoc in East Asia. Beijing's officials must understand they cannot conduct business as usual with the world if missiles start falling. They also need to know that fear of war is every bit as chilling to investment as the real thing.

Congress should congratulate the people of Taiwan for their continued steps toward democracy. Congress should also state its support for the people of Taiwan to become involved in international organizations. Taiwan has emerged as a force for democracy and stability in Asia, and its people should be represented. The U.S. must continue at the same time to encourage a true dialogue between Beijing and Taipei that will lead to understanding and conciliation, rather than threats and confrontation.

With this latest round of threats against Taiwan—and the U.S.—it is time to step back and gather forces to support reason and dialogue, rather than the rumblings of hostility and war.

President Nixon was correct in seeing the vast potential importance of China as a world economic power. But more than 20 years later, the world still waits for Beijing to abandon its totalitarian ways and to behave consistently as a civilized nation.

Mr. MURKOWSKI. I thank the Chair and commend the Senator from Wyoming for his effort in this regard.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, when the matter originally came up, I strongly opposed the resolution because it seemed to be a shift of ground away from the Shanghai Communique which has been the basis for almost a quarter of a century of our relationship to China.

Mr. President, we are deeply grateful, Senator NUNN, Senator FEINSTEIN, and I, and others, who had serious objection to the resolution in its original form.

With Senator THOMAS, Senator MURKOWSKI, and others, we are now working this out in a balanced way that makes clear that this Nation continues to adhere to the one-China policy, as enunciated in the Shanghai Communique and the communiques since that time under five American presidents. I believe it is not a perfect resolution, but it is a balanced resolution. On that basis, I can vote for it. I thank the Chair.

The PRESIDING OFFICER. The question in on agreeing to the amendment.

The amendment (No. 3562) was agreed to.

Mr. NUNN. Mr. President, the current tension in the Taiwan Strait creates a very dangerous situation. While

I do not believe that China intends to invade Taiwan, there is always the risk that accident or miscalculation could lead to conflict. China's actions have been precipitated by its perception that Taiwan is unilaterally seeking independence. While I regret that it is necessary, I applaud the decision by President Clinton to send two carrier battle groups to the region.

I would have preferred that no legislation or concurrent resolutions be passed by Congress in the current tense situation but I am opposed to the resolution passed by the other body and believe that it is necessary for the Senate to go on record on this important matter.

Mr. President, the concurrent resolution we are considering this afternoon is reasoned and responsible and is designed to make a constructive contribution to the situation. It is important because it recognizes that the one China policy that is based upon the three United States-China joint communiques has been and is being adhered to by the United States. It is important because it deplores the People's Republic of China's recent military actions and urges China to cease its action and to enter into a meaningful dialogue with Taiwan. It is important because it reminds everyone of the provisions of the Taiwan's Relations Act. And finally it is important because it states that the Government of Taiwan should remain committed to the peaceful resolution of its future relations with China by mutual decision.

Mr. President, as I noted in my floor speech on United States-China relations last month, the framework of the three communiques and the Taiwan Relations Act has served both sides of the Taiwan Strait as well as the United States well for almost 16 years. That framework made possible the relaxation of tensions in the Strait; has encouraged Taiwan to abolish martial law and become a prosperous democracy; made available to the Chinese on the mainland that talent and capital of the people on Taiwan; it played a major role in China's drive for modernization; and it produced a sense of security for China, for Taiwan, and the region. The thrust of this concurrent resolution is to remind both sides of the Taiwan Strait of these facts and to encourage them to maintain that framework—both its letter and its spirit.

Mr. President, I would like to repeat what I said at the end of last month's floor speech because it continues to sum up my thinking on this subject and is, I believe, totally consistent with this concurrent resolution.

Americans feel close to the people of Taiwan and are proud of their accomplishments. The people of Taiwan have made enormous strides economically and politically. They are an example to much of the developing world.

It is important for the United States, as a friend, to be clear with the Taiwanese that they must not misjudge China on the question of Taiwan independence.

It is important that the people of Taiwan understand that a unilateral declaration of Taiwan's independence would be inconsistent with United States foreign policy as set forth and followed by President Nixon, President Ford, President Carter, President Reagan, President Bush, and President Clinton.

It is also important for the Chinese to understand that the United States values its friendship and relationship with the people on Taiwan. It is crucial that the Chinese understand that if China uses force to resolve the Taiwan issue, the United States will not stand idly by but will surely respond.

For our part, the U.S. should make it very clear that we will oppose either side's attempt to change the status quo either by the use of force by Beijing or by unilateral declaration of independence by Taiwan. The United States position should be clear that we are prepared to live with any outcome negotiated in good faith between China and Taiwan. The future of Taiwan must be settled by mutual agreement between the parties, not by the unilateral actions of either. For that to happen, Taipei must stop its political provocations and Beijing must stop its military provocations.

The people of China and the people of Taiwan should resume a high-level dialogue to foster clear understandings and increased cooperation. Enormous progress has been made in economic cooperation and people-to-people contacts and visits on both sides of the Strait. While economic development and people-to-people cooperation are emphasized, political questions are complicated and emotional and their resolution will require a long-term effort. This will involve a trait for which the Chinese people are famous—patience.

Mr. President, I support this concurrent resolution.

Mr. KEMPTHORNE. Mr. President, I strongly support the resolution currently before the Senate reiterating this Nation's support for the people of Taiwan. I rise to speak about the recent escalation in military operations by the People's Republic of China—Mainland China—in the Taiwan Strait which is intended to intimidate the Republic of China—Taiwan. Mainland China announced on March 5, 1996, that it would test fire surface-to-surface missiles off the coast of Taiwan from March 8 through 15. China has made good on its threat and began missile firing and conducting amphibious live ammunition exercises on the southern tip of the Taiwan Strait on March 12. China plans to continue these exercises through March 24. The missile tests have forced the rerouting of commercial flights out of the Chiang kai-shek International Airport and have also impacted the shipping operations of the southern seaport of Kaohsiong. It has become painfully obvious that China's sole purpose in conducting these exercises is to attempt to demoralize the people and destabilize the government of Taiwan.

I am deeply concerned, as are other Members of Congress, with the rise in military activities in the Taiwan Strait meant to influence the first-ever Taiwanese presidential election on March 23, 1996. The importance of this election cannot be understated. It is the first election of president by popular vote in the 5,000-year history of China. The actions taken by mainland China have further hindered United States-China relations already convulsed by China's human rights violations, its failure to adequately deter the pirating of United States products in violation of copyright laws and suspected exportation and proliferation of nuclear equipment and technologies.

The primary reason for the renewed China-Taiwan tension is an ongoing power struggle within the Chinese government. The hardliners are using the Taiwan issue to exploit and capitalize on a vacuum in leadership caused by the continued failing health of Deng Xiaoping. These same hardliners will do whatever necessary to boost their own stock while simultaneously devaluing the stock of rivals.

The 1979 Taiwan Relations Act proclaims American support for the peaceful reunification of Taiwan and the mainland, and commits the United States to help Taiwan defend itself in case of Chinese aggression. The recent activity by the Clinton administration which includes the deployment of the carrier battle group U.S.S. *Independence* to the region to be joined later in the month by the U.S.S. *Nimitz* and its support ships, although a step in the right direction, does not clearly define our commitment to democracy in the region. The possibility of miscalculation leading to war cannot be ruled out as the Beijing government has refused to renounce the use of force against Taiwan.

With a population of more than 21 million people, Taiwan has much to contribute to the world. Its robust and vibrant economy ranks among the 20 largest in the world. Taiwan has one of the largest foreign exchange reserves of any nation with assets of approximately $100 billion. Taiwan has improved its record on human rights and routinely holds free and fair elections in a multiparty system. Taiwan has over the years demonstrated its continued support for humanitarian efforts through its contributions and response to international disasters, environmental destruction and famine relief operations. Additionally, Taiwan is a member of the Asian Development Bank and Asia-Pacific Economic Cooperation group.

In the face of psychological intimidation and outward aggression, the Taiwanese people stand firm in their commitment to full democracy. As stated by President Lee and Premier Lien, the Taiwanese presidential election will be held as scheduled. The Taipei government has repeatedly and adamantly expressed its pursuit of national reunification and strong opposition to Taiwan independence. Taiwan would like nothing more than to strengthen the cross-

Taiwan Strait relation and further the security and prosperity of the Asia-Pacific region.

It must be made clear and in very specific terms that China's actions endanger the peace and security in the region and therefore merit condemnation by all peace-loving countries of the world. I am sure I speak for a number of my colleagues when I urge the Administration to make a more definitive commitment to Taiwan's sovereignty. I ask that the President take every measure necessary to ensure that the pursuit of democracy and democratic practices are not fettered by Chinese intimidation and aggression.

Mr. GRAMS. Mr. President, I rise in strong support for the Senate amendment to H. Con. Res. 148, a resolution which expresses strong House opposition to the Chinese military exercises in the Taiwan Strait. The Senate amendment contains the language of S. Con. Res. 43, which I have cosponsored.

The Senate amendment, drafted by the chairman of the East Asia and Pacific Subcommittee of the Foreign Relations Committee, Mr. THOMAS, and cosponsored by Senators DOLE, HELMS, MURKOWSKI, myself and others, is similar to the House resolution yet sends an equally strong message to China that the United States views the missile tests as a threat to Taiwan, contrary to the spirit of the Taiwan Relations Act as well as the three United States-China Joint Communiques.

Mr. President, we are all painfully aware of the sensitivity portrayed by China to any effort by Taiwan to cultivate relationships with other nations. These actions have been wrongfully perceived to be efforts to pursue independence. The Taiwanese Government denies the allegations.

I am disappointed that China has gone to this extreme to counter what it believes is a growing interest in independence among the Taiwanese people. Even though the Democratic Progressive Party, which supports independence, has picked up a few seats in the Taiwan Parliament, it appears to be far from a threat in the presidential election of March 23. The major party, the National Party, has supported future unification.

While the administration has recently sent elements of the United States 7th Fleet to provide support for Taiwan, these Chinese exercises have been conducted for over 8 months. There has been a very weak response by the administration until this time. I feel compelled to ask the question of why these exercises occurred in the first place. Why have we let our relationship with China deteriorate to the point where military exercises that threaten Taiwan, where sales of nuclear materials continue, and where many other disputes and differences have worsened with China.

It should be an important United States foreign policy objective to set our relationship with China back on track. The administration must place this as a very high priority before the situation worsens. Constant, high-level communication with Chinese leaders may have enabled us to avoid these harmful disputes.

We must work toward ensuring that, after the March 23 election, both China and Taiwan begin a high-level dialog to decrease tensions and to resolve the issue of the future of Taiwan. This must be done in a peaceful manner, consistent with the Taiwan Relations Act and the Three Communiques.

The harm done by the military exercises will not make this an easy task.

I urge support for the Senate amendment to the House resolution.

Mr. SANTORUM. Mr. President, the People's Republic of China has conducted a series of missile tests in the last few weeks in a clear attempt to intimidate the people of Taiwan as they prepare for the first direct democratic election of President. These military exercises are not in the spirit of the three United States China Joint Communiques and serve as a threat to the peace, security, and stability of Taiwan.

I join my other colleagues who have cosponsored H. Con. Res. 148 in condemning the recent actions of the Chinese Government. This action severely tests the assumption that was set when we normalized relations with the People's Republic of China in 1979. We did so on the expectation that the future of Taiwan would be settled solely by peaceful means. We codified this commitment and understanding in the Taiwan Relations Act. In this legislation, we state clearly that America believes that peace and stability in the area are in the political, security and economy interests of the United States. This Act also commits the United States to reset any resort to force or other coercion that would jeopardize the security of Taiwan's people.

I urge the Chinese Government to honor the intent of the Joint Communiques and the Taiwan Relations Act by seeking a peaceful solution to this situation through dialog with Taiwan, and by ceasing their military actions.

Mr. DASCHLE. Mr. President, I am pleased to cosponsor the amendment to the resolution, H. Con. Res. 168, condemning the missile tests and military exercises being conducted by the People's Republic of China near Taiwan.

Last week I suggested that China's missile tests and military exercises have been dangerous and provocative. Unfortunately, tensions between China and Taiwan have not subsided. In fact, with Taiwan's first democratic Presidential election just around the corner, China's rhetoric continues loud and unabated.

The Clinton administration has gone to great lengths to warn China about the potential consequences of its actions and to underscore United States policy that the future of Taiwan must be resolved by peaceful means. I am pleased the Senate has joined in sending a strong signal to China.

With one clear voice, the Senate is now on record deploring the missile tests China has been conducting near Taiwan and recognizing that such tests are a potentially serious threat to peace and stability in the region. As I mentioned last week, China's missile tests and military exercises are dangerous in and of themselves, and they increase the chances of an accident that could cause tensions to spiral out of control.

It is important to emphasize that this resolution also supports the commitment of the United States, China, and Taiwan to resolve the future of Taiwan through peaceful means. United States policy clearly stipulates that the future of Taiwan should be determined peacefully. Taiwan has made similar overtures. China must also begin conducting itself in a way that reaffirms its commitment to that goal.

China can do just that by ceasing its attempts to intimidate the people of Taiwan and influence their upcoming Presidential election. This resolution urges China to cease missile tests and military exercises and enter into "meaningful dialog" with Taiwan. I completely agree, and it seems to me that Beijing should begin to communicate with Taiwan in a nonthreatening and peaceful way rather than carrying out reckless missile tests and military exercises.

I hope the resolution adopted by the Senate today will encourage China to resolve its differences with Taiwan peacefully.

Mr. PELL. Mr. President, this resolution is a thoughtful, appropriate response to recent developments in the Taiwan Strait. With this resolution, the Senate deplores the People's Republic of China's recent missile tests and military exercises in the Taiwan Strait as an unwarranted and dangerous attempt to intimidate Taiwan as it prepares to hold direct presidential elections this Saturday. It calls on China to return to negotiations at the highest levels between the two governments, negotiations which have successfully resolved a number of issues in the past. The resolution also reiterates our long-standing policy that maintaining peace and stability in the region is in the interest of the United States and that we expect Taiwan's future to be resolved peacefully and in a way that satisfies the Chinese on both sides of the Taiwan Strait.

As a sponsor of this resolution, I urge all parties involved to move away from provocative measures and to find new ways to de-escalate tensions. It is incumbent upon all parties to avoid taking steps which could lead unexpectedly, through mistake or miscalculation, to a conflict that no one wants.

Now is the time for calmer voices to prevail and I hope that all governments will listen for them.

I think this is a thoughtful and appropriate response, worked in a bipartisan way. It is a resolution we can support with pride.

The PRESIDING OFFICER. The question on agreeing to House Concurrent Resolution 148, as amended. The yeas and nays are ordered. The clerk will call the roll. The legislative clerk called the roll.

Mr. LOTT. I announce that the Senator from New Hampshire [Mr. GREGG] is necessarily absent.

Mr. FORD. I announce that the Senator from Nebraska [Mr. KERREY] and the Senator from New Jersey [Mr. BRADLEY] are necessarily absent.

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

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 51 Leg.]

YEAS—97

Abraham	Feinstein	McCain
Akaka	Ford	McConnell
Ashcroft	Frist	Mikulski
Baucus	Glenn	Moseley-Braun
Bennett	Gorton	Moynihan
Biden	Graham	Murkowski
Bingaman	Gramm	Murray
Bond	Grams	Nickles
Boxer	Grassley	Nunn
Breaux	Harkin	Pell
Brownback	Hatch	Pressler
Bryan	Hatfield	Pryor
Bumpers	Heflin	Reid
Burns	Helms	Robb
Byrd	Hollings	Rockefeller
Campbell	Hutchison	Roth
Chafee	Inhofe	Santorum
Coats	Inouye	Sarbanes
Cochran	Jeffords	Shelby
Cohen	Johnston	Simon
Conrad	Kassebaum	Simpson
Coverdell	Kempthorne	Smith
Craig	Kennedy	Snowe
D'Amato	Kerry	Specter
Daschle	Kohl	Stevens
DeWine	Kyl	Thomas
Dodd	Lautenberg	Thompson
Dole	Leahy	Thurmond
Domenici	Levin	Warner
Dorgan	Lieberman	Wellstone
Exon	Lott	Wyden
Faircloth	Lugar	
Feingold	Mack	

NOT VOTING—3

Bradley	Gregg	Kerrey

So, the concurrent resolution (H. Con. Res. 148) was agreed to.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. I ask unanimous consent that I may proceed as in morning business for 30 seconds.

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

SUPERFUND LEGISLATION

Mr. CHAFEE. Mr. President, I come to the floor today to join Senator SMITH, the distinguished chairman of the subcommittee of the Environment and Public Works which deals with Superfund. Let me take a moment to describe our progress and plans for Superfund reform.

The Superfund Program is our most troubled environmental statute. No one could disagree that the Congress should enact Superfund reform this year. No one is happy with the status quo—not industry, not environmentalists, not insurers, not State and local governments, not even the EPA and other Federal agencies.

Superfund reform is No. 1 priority of my committee in 1996.

Senator SMITH introduced S. 1285, the Accelerated Cleanup and Environmental Restoration Act, last September 29. This reform package represents a remarkable improvement over the status quo, and it is deserving of widespread support. I am a cosponsor.

Since introduction, Senator SMITH and I have met with the minority members of the subcommittee and administration for countless hours to explain the bill, make technical changes, and clarify its intent where needed. We have solicited the views of interested outsiders. As a result of these discussions, we have incorporated numerous changes, large and small, into the bill.

These negotiations, which are still continuing, have been productive, and I hope and expect that they will lead to a bill that garners widespread bipartisan support in the Senate, a bill that satisfies the President's often-stated desire to fix this program, a bill that he can and should sign.

At this point in our process, as our negotiations move into some of the more difficult issues, Senator SMITH and I agreed that it is important to give members of this body, as well as those outside parties interested in Superfund reform, an opportunity to look at, and comment upon, the results of our negotiations to date. The document, a staff draft that will be printed in today's CONGRESSIONAL RECORD, represents a snapshot of the current status of our negotiations. In a few moments, Senator SMITH will offer more detailed comments on this new draft of the Superfund bill.

All sides in our negotiations have justifiably reserved final judgment until negotiations are complete and important constituencies have had the chance to analyze and comment on the final product.

As we move forward, we want to provide opportunities to receive formal comments on the bill. In the next few days we will schedule hearings on the bill to occur as soon as possible after the Easter recess. We hope that we can reach substantive agreement on a bipartisan bill by that time, or else use the hearings to further explore the remaining areas of difference. We plan to move on to a markup and prepare the bill for floor action as soon as we can this spring.

I want to express my appreciation the ranking member of the committee, Senator BAUCUS, and the Superfund Subcommittee, Senator LAUTENBERG, for their contributions to the process. I also want to thank the administration for their efforts in these negotiations.

Most of all I would like to thank Senator SMITH for the many hours he and his staff have devoted to keeping Superfund reform on-track and moving forward. This is no easy task. Superfund is a complex and controversial program, and progress is always difficult in the best of circumstances, not to mention in a Presidential election year. We have a very good chance to enact Superfund reform this year, and if we do, a great deal of the credit should go to Senator SMITH.

Mr. SMITH. Mr. President, I want to thank my friend and colleague from Rhode Island, Senator CHAFEE, for working with me to enact a comprehensive Superfund reform measure. As Senator CHAFEE oulined, on September 29, 1995, I introduced S. 1285, the Accelerated Cleanup and Environmental Restoration Act. This legislation, which was cosponsored by Senator CHAFFEE and nine other members, was an effort to provide comprehensive reform of this troubled program.

I would like to thank Senator CHAFEE, the chairman of the Environment and Public Works Committee for his strong support in this effort. Over the last year, he and I have worked cooperatively to reform this program, and it is because of his assistance that I believe that this legislation can be passed this year.

As Senator CHAFEE has mentioned, he and I are here today to continue the process toward making sure that reasonable Superfund reform legislation will reach the floor this Spring. To achieve this goal, our respective staffs have spent more than 150 hours with Democrats on the Senate Environment Committee as well as representatives of the Environmental Protection Agency, the Justice Department, and the White House working toward achieving a bipartisan consensus toward reauthorizing the Superfund Program.

In a few moments, I will ask to be entered into the RECORD a copy of a staff discussion draft outlining changes that Senator CHAFEE and I are willing to make to achieve bipartisan consensus on this issue. As Senator CHAFEE stated, this is a snapshot of where we currently are in negotiations.

Let me be clear: this draft includes changes that I found to be constructive and reasonable—without compromising the underlying principles necessary for real Superfund reform. I remain committed to passing a strong bill that reduces litigation and accelerates clean up. As Senator CHAFEE indicated, the committee intends to hold a hearing the week we return from the Easter recess. At that point in time, interested parties will have the opportunity to testify on a final product that will be

used for markup. Additional agreements and disagreements will be worked out in the normal committee process through amendment.

Before I describe some of the details of this proposal, I would like to say a few words what this draft is and what it is not. During the last few months our staffs have met with hundreds of individuals who are interested in the future of this program, and who have provided us with specific comments about S. 1285. We have carefully weighted these comments, and this staff discussion draft, in part, is intended to respond to some of those concerns.

This draft is also intended to address some of the concerns that have been raised by Governors, the Clinton administration, Senate Democrats, as well as other interested parties. While this language represents a good faith effort address some of these concerns, these changes have not been agreed to by any other parties, and we are continuing to negotiate and address concerns that have been raised. Indeed, there are areas of this bill, including Federal facilities issues, amendments to the Resource Conservation and Recovery Act and natural resource damages, that we have not yet had the opportunity to fully address in these negotiations.

Nonetheless, as Senator CHAFEE has pointed out, we wanted to provide a window into our ongoing negotiations, and allow interested parties to have the opportunity to comment on these proposed changes. And again, it is important for me to stress that a final product will be forthcoming. Where we are in agreement, we will agree. Where we are in disagreement, we will agree to disagree, and move on with the process.

One area I do want to spend some time on this evening is the issue of liability reform. As many of my colleagues may know, when we released our initial liability reform proposal in September, there were some Members on our side of the aisle who felt that we had limited our horizons too much when we proposed a 50-percent tax credit for pre-1980 disposal activities. Although I was convinced, and continue to believe that our proposal had a great deal of merit, we have nonetheless decided to modify this section to address these concerns.

The liability proposal in the staff discussion draft, I believe, will provide significant liability reform, and will vastly diminish the scope and nature of ongoing litigation. In particular, our proposal would have the effect of eliminating liability for parties at multiparty disposal sites—those sites where there was an off-site generator or transporter—for disposal activities that occurred prior to December 11, 1980. These sites involve some of the most contentious and expensive litigation in the Superfund Program and have only helped to slow down the pace of cleanups.

This litigation has not helped to address this important environmental problem, but instead, has hindered the ability to protect human health and the environment in the shortest time possible. By providing orphan share contribution for these costs, I believe that we will not only significantly reduce the contentious nature of this litigation, but our reforms will allow these sites to be cleaned up faster.

Our liability proposal provides that deminimis parties, such as small mom and pop businesses, will be eliminated from the liability net if they were responsible for disposing of less than 1 percent of the volume of materials at a site prior to December 11, 1980, or if they disposed less than 200 pounds or 110 gallons of materials at an NPL site. This change will significantly reduce the number of parties at these sites who are needlessly dragged into the quagmire of litigation. Our legislation will not only eliminate their liability, but it will also provide for an up-front determination that they are not subject to this damaging and costly litigation process.

In addition, this staff discussion draft also provides a 10 percent cap on the total amount of liability for those municipalities whose potential liability resulted only from generating or transporting municipal solid waste or sewage sludge. This change, combined with the orphan share contribution for pre-1980 disposal at multiparty sites, will provide significant relief for cities and towns caught in the Superfund liability net.

I would be remiss if I did not discuss changes that we have proposed to make in the remedy selection portion of S. 1285. In the legislation we introduced in September, we proposed eliminating the requirements under current law that mandate the use of applicable, relevant, and appropriate State and Federal environmental cleanup laws. Both Senator CHAFEE and I received a significant number of comments from States about this provision. After a good deal of reflection, we decided to provide that applicable State and Federal cleanup laws can be applied to these hazardous waste cleanups.

There are a number of other issues that have been raised about the remedy selection portion of this legislation, including provisions related to groundwater cleanup, that we have not modified at this time. However, I do want to note that these issues are under discussion, and this draft does not represent our final proposal on this section.

Mr. President, Senator CHAFEE and I are here on the floor today to declare that Superfund reform is alive and well. As Senator CHAFEE has mentioned, he and I are here today to continue the process towards making sure that significant Superfund reform legislation will reach the floor this Spring. While our colleagues have not heard much from us recently, this does not mean we have not been working hard—we have. This is not to say that we still don't have a ways to go—we do.

I believe that the discussions we have been involved in over the last few weeks have been fruitful and have been conducted in good faith. Our colleagues, the President, and all parties involved in this program have frequently stated that they want comprehensive Superfund reform. Frankly, given its inadequacies, we simply can not afford to push Superfund reform off for another year. If our colleagues, including those on both sides of the aisle—as well as those in the White House—can keep the rhetoric down, we believe that we can pass a comprehensive Superfund reauthorization bill this year that will ensure faster, safer and cheaper cleanups.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that I be able to speak as in morning business.

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

THE TAIWAN RESOLUTION

Mrs. FEINSTEIN. Mr. President, I want to thank the Senator from Wyoming, Senator THOMAS, for his leadership on the issue of the resolution which was just passed by a vote of 97 to 0 in this body. I thank him for his cooperative approach to finding a text that all parties could agree on. I also express my thanks and admiration to the Senator from Louisiana, Senator JOHNSTON, and the Senator from Georgia, Senator NUNN, for their understanding of this issue and their efforts to craft a responsible resolution.

I would also like to thank Senators MURKOWSKI, HELMS, SIMON, and PELL, and the distinguished majority leader, and their staffs, for working with all of us in a cooperative spirit on this resolution.

Mr. President, in the last 2 weeks we have watched as China has tested four missiles in close proximity to Taiwan, and the People's Liberation Army has conducted live-ammunition military exercises in the Taiwan Strait.

These tests and exercises are, obviously, aimed at showing in a militant fashion China's depth of feeling about the Taiwan issue and, many believe, to influence the Taiwanese election which will take place in a 2 short days.

It is unfortunate, I believe, that China has chosen to express its displeasure through the use of military threats. It is wrong, and the United States is right to deplore it. The United States has for over 24 years adhered to a One China policy that is

based, in part, on the understanding that China will not seek to resolve its differences with Taiwan through other than peaceful means.

Our One China policy, of course, is also based on an understanding that Taiwan will not make any efforts to resolve its differences with China unilaterally or through any effort or move toward independence.

Clearly, a number of Taiwan's actions over the past several months—including President Lee Teng-hui's visit to the United States, Taiwanese military exercises concurrent with that visit, and an ongoing campaign for a seat at the United Nations—have called into question whether Taiwan is sincere in its statements that it opposes independence.

This resolution, then, sends two messages. It says to the Chinese that their use of military threats against Taiwan is unacceptable and represents a potential threat to United States interests in the western Pacific. President Clinton has deployed the USS Independence and the USS Nimitz to the region to monitor events. China must understand that the use of force against Taiwan would have grave consequences.

In addition, the resolution says to Taiwan that it must avoid provocative actions that cast doubt on its commitment not to pursue independence and, instead, to work for eventual peaceful reunification. Taiwan's security is important to the United States, but the United States will not sanction actions by Taiwan that raise tensions unnecessarily.

The One China policy is the essential element of the United States-China-Taiwan relationship. This policy has been the acknowledged framework that has served all three parties well for some two decades: The United States and China have been able to conduct normal relations befitting two great powers; China has entered into a period of dynamic economic growth; the United States and Taiwan have developed extensive economic and cultural ties; Taiwan has become the single largest investor in China, with over $20 billion in investments on the mainland; and, Taiwan has prospered and moved toward a democracy of which its people can be rightfully proud.

With all of these benefits flowing from the One China policy, and the fact that in a poll a week ago in Taiwan only 8 percent of the people favored independence and the overwhelming majority preferred the status quo, no one should take any precipitous action which would threaten to undermine the One China policy. In the aftermath of the Taiwan election, all three parties must move to restore balance to this relationship by reaffirming the One China policy.

China's concern, as relayed to me from its highest leadership, has been that Taiwan will not say that it endorses a One China policy and speaks with two tongues.

Mr. President, I would like to introduce into the RECORD a directive from Premier Lien Chan, the number two official of the Republic of China. His directive was made in writing on March 5. It was made public by Patrick Tyler, the Beijing reporter for the New York Times. I called the Taiwan office and received a copy of it. It is on two pages.

The part that I would like to quote is as follows:

I reiterate that the Republic of China government is adamant in its pursuit of national reunification and strong opposition to Taiwan independence.

When I called the Chinese Ambassador and made clear that this had been presented in writing, he made the point that it is presented in English but that it has appeared nowhere in Taiwan in Chinese.

I ask unanimous consent to have the directive printed in the RECORD, if I may, at this point in my remarks.

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

A DIRECTIVE FROM PREMIER LIEN CHAN, THE EXECUTIVE YUAN, REPUBLIC OF CHINA, MARCH 5, 1996

It is the responsibility of the government of the Republic of China to preserve peace and stability in and around the Taiwan Straits in order to ensure public welfare and the security of the nation. Since July 1995, the Chinese communists have conducted several military exercises. Thanks to the unity of our people and proper measures taken by our government, the Taiwan, Penghu, Kinmen, and Yatsu area has remained stable.

Early this morning, the mainland authorities announced plans to launch missiles in waters to the northwest and southwest of Taiwan between March 8 and March 15, 1996. This action clearly is aimed at influencing the ROC's ninth presidential and vice presidential election, destroying the peace in the Taiwan Straits, and endangering regional peace and stability. On behalf of the ROC Government, I wish to express the strongest protest, and call upon the mainland authorities to cancel this provocation. We will hold Peking responsible for any unfortunate consequences which arise from this action.

Facing this situation, the Executive Yuan has directed the concerned agencies to make the following preparation:

(1) The ROC armed forces have been directed by the government to maintain a state of alert, and are prepared to meet all possible actions of the Peking regime. They will continue to monitor military activity on the mainland closely provide instant reports, and take all necessary measures immediately, as the need arises.

(2) We have already adopted necessary measures to ensure the safety of our fishermen and normal air and sea transportation in the vicinity.

(3) We will continue to maintain law and order, stabilize the financial sector, and maintain normal economic activities.

(4) The ROC's ninth presidential and vice presidential election, a historic event to be held on March 23rd, shall be carried out as planned.

I reiterate that the ROC Government is adamant in its pursuit of national reunification and strong opposition to Taiwan independence. This election is being carried out in accordance with the Constitution of the Republic of China, and is in line with the will of the ROC people, and with world trends.

The outcome of this election will not affect our position on cross-Straits relations; nor will it alter our government's steadfast pursuit of national reunification.

It has also been, and still is, the longstanding policy of the ROC Government to strengthen cross-Straits exchange and negotiation while promoting positive interaction. The difference in political systems and ways of life across the Taiwan Straits is the main obstacle to reunification. However, this is not an issue that can be resolved by military means. An atmosphere that is conducive to reunification can be created only by relying on patience, promoting understanding through step-by-step exchange, dissolving hostility, and pursuing a way of life that is most beneficial to the Chinese on both sides of the Straits. Popular will has indicated time and again that it is the common aspiration of the people on both sides to see the end of cross-Straits enmity and promote mutual benefits and prosperity on the basis of peace.

The government of the Republic of China has already decided that, in the future, it will foster consensus on a concrete and feasible proposal that will make a historic contribution to the development of cross-Straits peace and to the security and prosperity of the Asia-Pacific region. The mainland authorities should not unilaterally distort our position and repeatedly take actions that damage the bonds between the people on either side of the Taiwan Straits. This only hampers cross-Straits exchanges and progress toward reunification.

I hope that the entire body of ROC citizens will remain calm and rational during this period, and continue to trust and support their government. The government will take appropriate and effective measures, and handle the situation with caution and in a manner that ensures full protection to the welfare of the people.

Mrs. FEINSTEIN. Mr. President, I think it is very important that this directive, which clearly states that it is the policy of the Taiwanese Government to pursue national reunification and strongly oppose independence, be known by the world.

Now there will be a window of opportunity following Saturday's election for resumption of the Cross-Straits Initiative that was derailed last summer after Lee Teng-hui's visit. This dialogue, conducted by China's Association for Relations Across the Taiwan Straits and Taiwan's Straits Exchange Foundation, offers a unique opportunity to begin to meet and discuss the major issues concerning reunification.

China has for some time offered Taiwan direct air service. As you know, today the plane leaves Taiwan, it appears to land at Macao, it changes its flight number, and it goes on to China. This is not necessary. China is prepared to once again offer, as its Vice Foreign Minister told 10 U.S. Senators who were present at a meeting last week, direct sea service and direct postal service.

I ardently urge both parties to sit down at the table and begin to discuss

issues around which there is a common interest. One has to be a One China policy. The second has to be peaceful reunification. The third has to be steps taken to achieve both of the foregoing.

I think the peace, security, and stability of Asia, and perhaps the world, are at stake in these discussions.

I earnestly and sincerely implore the parties, both the People's Republic of China and the Republic of China, to sit down at the table, to end these military exercises, and to resolve a peaceful reunification for the future.

I thank the Chair for your indulgence.

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

THE NOMINATION OF CMDR. ROBERT STUMPF

Mr. COATS. Mr. President, I would like to address the issue concerning the procedures used by the Senate Armed Services Committee in evaluating nominations and, in particular, the nomination of Cmdr. Robert E. Stumpf.

The Senate Armed Services Committee has received considerable public criticism since the Secretary of the Navy removed Commander Stumpf from the promotion list.

The committee, and some of its members, have been the subject of numerous articles in the media relating to both substantive and procedural issues concerning this matter. Much of the material that has appeared in the media reports has been inaccurate and incomplete. Some of the material has been written by Commander Stumpf's lawyer. Others quote either Commander Stumpf, his attorney, or both.

To this point, members of the Armed Services Committee have not responded publicly on the substance of the information provided to the committee by the Navy, nor on the deliberations conducted within the executive session. This is in accordance with established committee rules and procedures, including procedures designed to protect the privacy and reputation of nominees, with appropriate regard for the rights of Commander Stumpf.

Last Thursday, Senator THURMOND, as the chairman of the Armed Services Committee, on behalf of the committee, placed a statement in the RECORD which began by reciting the chronology of events concerning the nomination of Commander Stumpf. I do not think there is any doubt or debate about the sequence of events. But I want to review those events for the RECORD.

On March 11, 1994, the President submitted various nominations for promotion in the Navy to the grade of captain (O-6), including a list containing the nomination of Commander Stumpf. On the same date, the Assistant Secretary of Defense, in the letter required by the committee on all Navy and Marine Corps nominees, advised the committee that none of the officers had been identified as potentially implicated on matters related to Tailhook. After careful review, the list was reported favorably to the Senate on May 19, 1994, and all nominations on the list were confirmed by the Senate on May 24, 1994.

Subsequent to the Senate's confirmation of this promotion list, but prior to the appointment by the President of Commander Stumpf to the grade of captain, the committee was advised by the Department of Defense that the March 11, 1994, letter had been in error because the Navy had failed to inform the Office of the Secretary of Defense that Commander Stumpf had been identified as potentially implicated in Tailhook.

As a result, on June 30, 1994, the Armed Services Committee requested that the Navy withhold action on the promotion of Commander Stumpf until the committee had an opportunity to review the information that had not been made available to the Senate during its confirmation proceedings. It was entirely appropriate that the committee request the withholding of Commander Stumpf's promotion once it had been notified of the Navy's failure to report the potential implication of Commander Stumpf in Tailhook-related activities.

It is also worth noting that the Armed Services Committee has no capacity to investigate nominations on its own. The committee must rely solely on the information provided by the Department of Defense, which, in this case, was incomplete.

On April 4, 1995, the Navy provided the committee with the report of investigation and related information concerning Commander Stumpf. And I would note this is not all the information related to Commander Stumpf for his case. The committee is still receiving documents relating to that particular case. And subsequently, the Navy provided additional information in response to requests from the committee. And those requests are ongoing.

On October 25, 1995, the committee met in closed session, consistent with its longstanding practice, to consider a number of nominations and to further consider the matter involving Commander Stumpf. After due consideration, the committee directed the chairman and ranking member to advise the Secretary of the Navy that, and I quote:

> Had the information regarding Commander Stumpf's activities surrounding Tailhook 91 been available to the committee, as required, at the time of the nomination, the committee would not have recommended that the Senate confirm his nomination to the grade of captain.

The committee also directed that the letter advise the Secretary that, and again I quote from the letter:

> The committee recognizes that, in light of the Senate having earlier given its advice and consent to Commander Stumpf's nomination, the decision to promote him rests solely with the executive branch.

A draft letter was prepared, reviewed by the Senate legal counsel, made available for review by all members of the committee, and was transmitted to the Secretary on November 13, 1995. On December 22, 1995, the Secretary of the Navy removed Commander Stumpf's name from the promotion list.

The committee met next on March 12, 1996, to review the committee's procedures for considering Navy and Marine Corps nominations in the aftermath of Tailhook. At that meeting, the committee again reviewed the proceedings concerning Commander Stumpf.

I do not think many people outside the committee fully understand the committee's procedures in handling controversial nominations. Just to make it clear, when the committee is notified by the Department of Defense that there is potentially adverse information concerning a nominee, that nomination moves to a separate, more deliberate track than those nominations about which there is no adverse information. The committee staff is required to research the information provided by the Department of Defense and to brief the members in an executive or closed session. Attendance at these executive sessions is limited to Members of the Senate and committee counsel. These restrictions are designed to minimize the number of people who may learn of information which may be very personal, sometimes inflammatory, and may involve allegations which have been found to not be substantiated.

Following a procedure developed late in the 103d Congress, the chairman and ranking member of the Personnel Subcommittee are charged with reviewing those cases prior to an executive session. In the case of Commander Stumpf, the committee followed those procedures precisely.

The committee met in executive session on October 25, 1995, to discuss a series of nominations, as I indicated. Seven Tailhook-related nominations were considered that day. For the record, those members present voted to favorably recommend two of the seven and to return five of the nominations to the executive branch at the end of the first session. The one remaining Tailhook-related individual discussed during that meeting was Commander Stumpf.

On December 22, 1995, as I earlier indicated, Secretary Dalton removed Commander Stumpf from the promotion list. Following that action by the Secretary of the Navy, a number of public articles, some written by Commander Stumpf's defense team, questioned the committee's integrity, its processes and its judgment. These allegations have been characterized by

misinformation, distortions of the record, and misstatement of the facts.

Numerous articles and sources have questioned the committee's procedures related to Tailhook nominations, alleging that the prospect of confirmation of service members nominated for promotion but involved in Tailhook are "slim."

The records of the committee show that the committee has received 23 nominations of service members potentially implicated in Tailhook. Only eight of those have been rejected by the committee. To put this in perspective, the committee has confirmed 43,270 Navy and Marine Corps officers since 1992.

A published article says that "one member of the committee now maintains that there were reasons other than Tailgate for rejecting Commander Stumpf." There have been other allegations that the committee had information other than that provided by the Navy. An article in the March 1996 edition of the Armed Forces Journal says that Commander Stumpf and Mr. Gittins, Commander Stumpf's attorney, believe there were anonymous phone calls to the committee. These allegations imply that the committee based its conclusions concerning Commander Stumpf on information which was unknown to Commander Stumpf and the Navy.

While it is true that on occasion the committee does receive information from outside sources, since the committee does not have the capacity to independently investigate, committee procedures are to refer such information to the Department of Defense. In Commander Stumpf's case, there was no outside information provided to the committee. The committee did not consider any material other than that provided by the Navy when it determined that, as the November 13, 1995 letter to Secretary Dalton states, "Had the information regarding Commander Stumpf's activities surrounding Tailhook '91 been available to the committee as required at the time of the nomination, the committee would not have recommended that the Senate confirm his nomination to the grade of captain."

Mr. President, unfortunately, misrepresentations and misstatement of the facts related to the committee deliberations on this matter have put the Armed Services Committee at a severe disadvantage. Our policy has been to protect the confidentiality of the nominee, and we are limited in our ability to respond.

Certainly in this case, the nominee, Commander Stumpf, does not share our concern. In fact, a Wall Street Journal article dated March 12, 1996, stated that Commander Stumpf and his attorneys have indicated that the committee should feel free to tell the entire world whatever it is that Senators think they know about him. It is noteworthy, Mr. President, that Commander Stumpf, in a letter to the chairman of the Armed Services Committee dated March 13, 1996, requested that he be permitted to testify before the committee but in a closed hearing, not open to the public or the media.

Mr. President, I believe it is important that our Senate colleagues be advised that the committee, in reviewing nominations for promotion, carefully examines each individual case and, among other criteria, believes the standard set forth in title X of the United States Code pertaining to the responsibilities of a commander entitled "Requirement for exemplary conduct" are applicable, and I quote from title X:

> All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

This standard, Mr. President, is repeated verbatim in article 1131 of the U.S. Navy Regulations issued in 1990. There are similar provisions in title X which pertain to the other services, as well as other provisions relating to members of the armed services.

The committee does not take lightly these statutory and regulatory standards. Nor do they take lightly their constitutional responsibilities to provide their advice and consent on military nominations.

A number of articles that have been written have referred to Senator NUNN's involvement in the committee's deliberations and decisions. While Senator NUNN has exercised his due diligence in this case, as he does with every other matter before the Senate Armed Services Committee, I would like to state for the record that as chairman of the Subcommittee on Personnel of the Senate Armed Services Committee, I take responsibility for the procedures used by the subcommittee staff to review military nominations and I fully stand by those procedures used by the staff in carefully reviewing the nominations presented to the committee by the executive branch, including the procedures used to evaluate the nomination of Commander Stumpf.

I have reviewed that material in depth. I have personally and carefully evaluated the file on Commander Stumpf. I have discussed the matter at length with the staff and I have concluded that, based exclusively—exclusively on the facts presented to the committee by the Department of Defense with due regard for the statutory and regulatory standards governing the conduct of military commanders and officers, as well as long-established military precedents, that I could not recommend approval of Commander Stumpf's nomination to the committee.

Each member of the committee is, of course, free to accept or reject any recommendation, and I certainly respect those who have come to a different conclusion in this matter. Each member is free to separately evaluate all of the material available to the committee on this nomination or any nomination. Each member is, of course, free to debate the case for or against either Commander Stumpf's nomination or any other nomination. In the final analysis, of course, each member is free to vote yea or nay on any particular case.

I am disappointed that so many in the media followed the well-intentioned but misinformed lead of those who do not know the facts of the case and the committee's deliberations. The Armed Services Committee is an important part of the institution of the Senate. Everyone in this body is hurt when the Senate Armed Services Committee is vilified and members cannot respond because of loyalty to rules and procedures put in place to protect the confidentiality of the matters before it and the nominees before its consideration.

Mr. President, I look forward to a time when respect for the privacy of an individual and respect for such a great institution as the U.S. Navy is not overridden by the desire of a journalist or an attorney or any others to take advantage of a situation to forward their own agenda.

The Secretary of the Navy has removed Commander Stumpf from the promotion list. The committee no longer has any nomination before it pertaining to Commander Stumpf. The committee has no legal authority to take any further action concerning the promotion of Commander Stumpf at this time.

As in every case in which a military nominee has been removed from a promotion list, the only process by which Commander Stumpf can be renominated for promotion is to be selected by another promotion board and be nominated by the President again, or, alternately, directly nominated by the President under his authority, granted by article 2 of the Constitution.

As I have stated before, the decision of the committee after due deliberation was that, had the information regarding Commander Stumpf's activities surrounding Tailhook '91 been available to the committee as required at the time of the nomination, the committee would not have recommended

that the Senate confirm his nomination to the grade of captain. That was the committee's determination then. That is the committee's determination now. Nothing that has transpired since has altered the committee's decision.

I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. NUNN. Mr. President, I am pleased to join with the leaders of the Subcommittee on Personnel of the Armed Services Committee, Senator COATS and Senator BYRD, in addressing the review of the military nominations in the aftermath of Tailhook, including the nomination of Commander Robert Stumpf, U.S. Navy. Senator COATS has addressed this matter with extreme accuracy in an absolutely factual presentation, for which I applaud him, in making that presentation.

The review of military nominations, particularly those involving adverse information, is a responsibility taken very seriously by the members of the Armed Services Committee, as the Chair well knows, being a member of that committee. This is a responsibility that the Constitution assigns to the Senate and the Senate has assigned to the Committee on Armed Services, as its, in effect, agent, to make recommendations to the full Senate. Within the committee, the responsibility of making recommendation on military nominations rests with the leadership of the Subcommittee on Personnel.

Senator COATS and Senator BYRD, as chairman and ranking member of the Subcommittee on Personnel, have fulfilled this responsibility with skill, dignity, and absolute fairness. They have provided the committee with serious, sober, and balanced recommendations on military nominations.

When the committee considered the promotion of Commander Stumpf on October 25, 1995, I listened, as other members did, with care to the presentation made by Senator COATS on behalf of himself and Senator BYRD. I found his assessment to be persuasive and I voted in favor of the recommendation of Senator COATS and Senator BYRD, that Commander Stumpf not be promoted.

The subject of Commander Stumpf's promotion has been the subject of some attention in the Department of the Navy, among those who follow Naval aviation, and in the news media. I am pleased to join Senator COATS, Senator BYRD, and others, in placing this matter in the proper perspective.

On March 13, 1996, the Armed Services Committee issued a statement concerning the committee's consideration of the promotion of Commander Stumpf, U.S. Navy.

I ask unanimous consent that statement be printed in the RECORD at this point.

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

On March 11, 1994, the President submitted various nominations for promotion in the Navy to the grade of Captain (O-6), including a list containing the nomination of Commander Stumpf. On the same date, the Assistant Secretary of Defense, in the letter required by the committee on all Navy and Marines Corps nominees, advised the committee that none of the officers had been identified as potentially implicated on matters related to Tailhook. The list was reported favorably to the Senate on May 19, 1994, and all nominations on the list were confirmed by the Senate on May 24, 1994.

Subsequent to the Senate's confirmation of the list, but prior to the appointment by the President of Commander Stumpf to the grade of Captain, the committee was advised by the Department of Defense that the March 11, 1994 letter had been in error because the Navy had failed to inform the Office of the Secretary of Defense that Commander Stumpf had been identified as potentially implicated in Tailhook. On June 30, 1994, the committee requested that the Navy withhold action on the promotion until the committee had an opportunity to review the information that had not been made available to the Senate during the confirmation proceedings.

On April 4, 1995, the Navy provided the Committee with the report of the investigation and related information concerning Commander Stumpf, and subsequently provided additional information in response to requests from the committee. On October 25, 1995, the committee met in closed session—consistent with longstanding practice—to consider a number of nominations and to consider the matter involving Commander Stumpf. The committee directed the Chairman and Ranking Member to advise the Secretary of the Navy that "had the information regarding Commander Stumpf's activities surrounding Tailhook '91 been available to the committee, as required, at the time of the nomination, the committee would not have recommended that the Senate confirm his nomination to the grade of Captain." The committee also directed that the letter advise the Secretary that: "The committee recognizes that, in light of the Senate having earlier given its advice and consent to Commander Stumpf's nomination, the decision to promote him rests solely with the Executive Branch." A draft letter was prepared, made available for review by all members of the committee, and was transmitted to the Secretary on November 13, 1995. On December 22, 1995, the Secretary of the Navy removed Commander Stumpf's name from the promotion list.

The committee met on March 12, 1996, to review the committee's procedures for considering Navy and Marine Corps nominations in the aftermath of Tailhook. At that meeting, the committee reviewed the proceedings concerning Commander Stumpf.

The committee, in considering the promotion of Commander Stumpf, acted in good faith and in accordance with established rules and procedures, including procedures designed to protect the privacy and reputation of nominees, with appropriate regard for the rights of Commander Stumpf. The Chief of Naval Operations has testified that he believes such confidentiality should be maintained. The committee made its November 13, 1995 recommendation based upon information that was made available by the Navy.

At the present time, no nomination concerning Commander Stumpf is pending before the committee, and the Secretary of the Navy has removed his name from the promotion list. The committee has been advised by the Navy's General Counsel that this administrative action taken by the Secretary of the Navy is final and that the Secretary cannot act unilaterally to promote Commander Stumpf.

The committee notes that much of the material that has appeared in the media about the substantive and procedural issues concerning this matter, is inaccurate and incomplete.

As with any nominee whose name has been removed from a promotion list, Commander Stumpf remains eligible for further nomination by the President. If he is nominated again for promotion to Captain, the committee will give the nomination the same careful consideration it would give any nominee.

Mr. NUNN. Mr. President, I believe that statement has already been alluded to by my friend from Indiana. Commander Stumpf had a distinguished military record, including decorated combat service. That record was considered strongly by the committee in the review of his promotion.

The Navy also provided the committee with information, subsequent to his confirmation by the Senate, which raised issues about Commander Stumpf's qualifications for promotion to a higher grade.

As with almost any nomination involving such information, factual information, reasonable people can disagree on whether the information considered by the committee disqualified Commander Stumpf for promotion. I respect my colleagues, and others, who come to a different conclusion than I.

The significance of the committee's statement that has just been printed in the RECORD is that both those who support Commander Stumpf's promotion and those who do not support his promotion have agreed that the Armed Services Committee, quoting the committee, "* * * acted in good faith and in accordance with established rules and procedures, including procedures designed to protect the privacy and reputation of nominees, with appropriate regard for the rights of Commander Stumpf." That was a unanimous statement of the Armed Services Committee.

In addition, all the members of the committee agreed, "Much of the material that appeared in the media about the substance and procedural issues surrounding this matter is inaccurate and incomplete." That, too, was a unanimous opinion of the Armed Services Committee, including both those who favored the Stumpf nomination and those who did not.

The inaccurate stories, unfortunately, continue. The March 15 Washington Times asserts, for example, that there was, "* * * an effort to rescind the committee's November 1995 letter," recommending that Commander Stumpf not be promoted. That statement in the Washington Times is misleading. I was there for the whole meeting. No such motion was made or voted on. No such motion was ever made or voted on in the committee.

PROCEDURES OF THE SENATE ARMED SERVICES COMMITTEE FOR THE CONSIDERATION OF NOMINATIONS

Mr. President, before addressing issues that have been raised about the Committee's consideration of CDR Stumpf, I would like to summarize the Committee's procedures for handling Navy and Marine Corps nominations in the aftermath of Tailhook.

The Department of Defense provides the committee with a letter on all flag and general officer nominees in the Army, Navy, Air Force, and Marine Corps advising the Committee of any potentially adverse information since the individual's last confirmation.

In 1992, when the committee learned of the serious flaws in the Navy's Tailhook investigations, we established a similar requirement for Navy and Marine Corps nominees of all grades—a procedure that was supported by all members of the committee. The then-chairman and ranking minority member of the Manpower Subcommittee, Senator GLENN and Senator MCCAIN, were instrumental in establishing that process. Had we not done so, it is doubtful we could have moved any Navy/Marine Corps nominations through the Senate in view of the serious concern in the Senate about the inability of the Navy to investigate itself and identify those who were involved in misconduct or leadership deficiencies.

In August 1993, the Department of Defense proposed that the Tailhook procedure be modified in view of the completion of the additional investigations, and the Committee concurred. Under the modified procedure, DOD notifies the Committee as to whether any nominee was identified as potentially implicated by the Department of Defense Inspector General or by the Department of the Navy. With respect to any individual so identified, DOD advises us of the status of any administrative or disciplinary action. In April 1995, Senator Thurmond, as Chairman, specifically rejected a request from the Department of the Navy to change these procedures, noting that decision would have to be made by the Committee.

It is the longstanding policy of the committee—under both Republican and Democratic chairmen—that when we consider adverse information about a nominee—whether related to Tailhook or any other matter—we do so in closed session. Senate Rule 26.5(b)(3) authorizes a closed hearing when the matters to be discussed "will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual."

The committee's practice of conducting nomination proceedings involving adverse information in closed session is based upon concern for the interests of the military officers whose nominations are pending before the committee. In the overwhelming majority of cases, the adverse information provided to the committee involves minor infractions which have been addressed internally by DOD and which the committee determines to be not disqualifying.

In view of the fact that adverse information about an officer considered by the committee is determined to be not disqualifying in most cases, few if any officers would want this information to be considered in a public session. In the relatively few cases where the Committee does not take favorable action, neither the Service nor the officer normally seeks to publicize the adverse information. When the committee publicly discusses the basis for rejecting a nomination, it normally is in the context of a report on systemic problems.

CONSIDERATION OF THE PROMOTION OF CDR STUMPF

The committee's traditional procedures for reviewing nominations in closed session, as well as the procedures for considering Navy and Marine Corps nominations in the aftermath of Tailhook, were in place when the committee considered the promotion of Commander Stumpf. As I noted earlier, the members of the committee who supported his promotion as well as those who opposed the promotion have agreed the committee followed the appropriate procedures in addressing this matter, and the letter so indicates. That opinion, apparently, is not shared by Commander Stumpf's attorney, Mr. Charles Gittins.

Although the committee took no steps to publicize its October 25, 1995 decision to recommend that Commander Stumpf not be promoted, nor did the committee release any of the information that led the committee to recommend against his promotion, Commander Stumpf's attorney has made repeated public comments about the committee's consideration of Commander Stumpf's promotion.

In the December 19, 1995, Washington Times, Commander Stumpf's attorney, Mr. Gittins, was quoted as accusing the committee of operating on the basis of "rumor and innuendo."

A CBS Evening News interview on January 8, 1996, quoted Commander Stumpf's attorney as stating his client was removed from the promotion list as a result of "blackmail."

In the January 31, 1996, Washington Times, Commander Stumpf's attorney was quoted as stating that the decision was a result of "political pressure and threats to Navy programs."

In a February 2 op-ed piece in the Washington Times entitled "Get the Senate Out of the Navy," Commander Stumpf's attorney asserted that his client was not promoted as a result of "political pressure" and that the Armed Services Committee was acting "for political advantage."

He concluded: "Senator McCarthy may be gone, but McCarthyism lives on in the Senate."

These statements have spawned a host of editorials, columns and letters which have painted a picture of this matter which, as noted in the statement issued by the committee on March 13—with unanimous committee approval—"is inaccurate and incomplete."

For the last 3 months, Commander Stumpf's counsel and advocates have argued his case in the public arena, citing only those portions of the material favorable to his cause. Material that would have given a complete picture of the basis for the committee's recommendation has not been released, was not released by Commander Stumpf, was not released by his attorney, and has not been released by the committee, because the committee has been restrained by a self-imposed gag order. Why have we not responded? Because we play by the rules, and we do not release materials from our nomination files without a vote by the committee.

It is interesting to note that those of us who have been under attack—and I appreciate very much the statement of the Senator from Indiana—those who have been under attack have not leaked anything in self-defense or in any other way. Nothing has been leaked on the committee's side of the issue. So it is an interesting kind of committee restraint here.

Indeed, the committee has shown remarkable restraint. As Members of the Senate know, I believe we should conduct most—not all—most nomination proceedings involving adverse information in a closed session. I discussed this matter at length in a speech I delivered on this floor on October 16, 1991, in the aftermath of the proceedings on the nomination of Justice Clarence Thomas, which was in the Judiciary Committee, not our committee.

I also believe, however, that when a nominee chooses to place his or her version of the facts in the public arena and challenges the motives and the good faith of the committee—indeed, statements like McCarthyism, and so forth—the committee must find an appropriate way to respond.

Although the committee provided a general response on March 13, the committee decided at that time to not release specific information about Commander Stumpf. There is no nomination now pending before the committee. The committee deferred to the views of the Chief of Naval Operations, Admiral Boorda, who testified in a public hearing on March 12 when I asked him a question, that they did not favor public dissemination of nomination information in this case. That is the view of the Chief of Naval Operations.

While I do not concur in that view because of the unique circumstances of this matter being handled, in effect, in a public relations matter in the public arena, since it results in a one-sided public presentation of information, I understand and respect those who believe we should not release any information when this matter is no longer pending before the committee. I deferred to that view in committee, because it was, obviously, the view of the majority.

The committee has agreed, however, that it is appropriate for Senators to identify the areas in which the statements in the media are inaccurate and incomplete.

CONSIDERATION OF COMMANDER STUMPF'S NOMINATION IN CLOSED SESSION

Commander Stumpf's attorney, in the December 19, 1995, Washington Times, is quoted as criticizing action of the Armed Services Committee because the committee has "operated behind closed doors" when considering his client's case.

As I noted earlier, the committee considers adverse information in closed session. We do that all the time. That is our normal operating procedure, and that is done in order to protect the reputation of nominees, a process that is strongly supported by the U.S. military. As far as I know, all branches of the military support that procedure, as well as the civilian leadership of the Department of Defense.

Prior to the committee's October 25, 1995, decision to recommend Commander Stumpf not be promoted, the committee received no letter from his attorney requesting that we proceed on this nomination in open session. We received no such letter, no such information, no such request, according to all the information I have received, checking with both majority staff and minority staff.

Commander Stumpf's attorney apparently made a tactical decision not to request an appearance or an open session. Having made that decision, how can he now fault the committee for reviewing the promotion in closed session in accordance with longstanding committee procedure, which we do on all nominations that have adverse information of a personal nature.

It is not clear Commander Stumpf's attorney wants this matter to be considered in public. The March 12 Wall Street Journal reported, "Commander Stumpf and his attorney say that the committee should feel free to tell the whole world whatever it is the Senators think they know about him."

That was a story for public consumption. That was a PR story. Yet, on March 13, 1996, as the committee was completing our review of Tailhook matters, the committee received a letter from Commander Stumpf faxed from his attorney's law firm, I am told, in which he asked to meet with the committee "in closed session."

Mr. President, I ask unanimous consent that the letter from Commander Stumpf, as well as Chairman THURMOND's response, be printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. NUNN. Mr. President, I note that the letter I just referred to from Commander Stumpf faxed to us on March 13, 1996, was dated February 13, even though it was faxed to us on March 13. I have to assume that was a typographical error, unless there is another explanation. I am informed by the majority staff that the committee did not receive such a request until March 13 and certainly did not receive that prior to our review of Commander Stumpf's promotion in 1995.

Mr. President, just in case anyone does not understand what it means to hold a closed session, let me make it clear. It is a proceeding in which the public is excluded. The press is excluded. Virtually all staff are excluded. The hearing record is not published. Under the Senate rules, Senators are specifically prohibited from disclosing information received in a closed session. When we hold a closed session, the committee is not free to tell the whole world what transpired before the committee.

In light of Admiral Boorda's request that the information regarding Commander Stumpf not be released to the public, and in view of Commander Stumpf's request to proceed in closed session, the committee decided during its deliberations last week to not release materials from the nomination files. While I personally believe the materials should have been released in light of the decision by Commander Stumpf's attorney to selectively release information to the public, I respected the views of others—and still do—who felt the material should not be released at that time.

Having decided on March 13 not to release the material in deference to the Navy and Commander Stumpf's privacy interests, the committee now finds itself subjected to yet another misleading story as a result of a statement in the press attributed to Commander Stumpf's attorney.

A March 19, 1996, AP wire story states that he "has no objection" if the committee releases its material on Commander Stumpf. According to the story, Commander Stumpf's attorney said, "I've told them they can release anything they want."

Mr. President, I have received no such communication from Commander Stumpf's attorney. I have been informed again by majority staff that Senator THURMOND, the chairman of the committee, has received no such communication. I assume Senator COATS and Senator BYRD have received no such communication, and they are indicating that is accurate.

I have no idea with whom the attorney, Mr. Gittins, is communicating, but it is not the Senate Armed Services Committee. Mr. President, if these press accounts accurately quote Commander Stumpf's lawyer—and I always allow that the press reports could be inaccurate—it would appear that the rules of the Senate and the committee designed to protect the privacy of nominees are being manipulated to imply a willingness to support and release information when, in fact, no such willingness has been communicated to the committee nor, as far as I know, to the Navy. I do not know what has been communicated to the Navy, but I certainly have not had any indication that Commander Stumpf's attorney has said to the Navy, "Please release the information," or, "You have our permission to release all the information."

First, counsel is quoted as criticizing the committee for having closed sessions; then the press reports that the officer whose privacy is being protected by the committee wants everything made public. Then the Chief of Naval Operations, who supports the promotion and said so in the committee, says the material should not be made public. Subsequently, the officer requests a closed session. After the committee issues a statement reaffirming its commitment to the officer's privacy interests, his counsel is quoted as saying he told the committee again, "They can release anything they want," even though no such communication had been received by the committee.

If Commander Stumpf's attorney wants all the information related to his client released to the press, he should clearly communicate his views to the committee and the Navy. I suggest a letter would be the normal way to communicate. The Navy has full authority to release all documents related to Commander Stumpf, including the investigation into matters relating to Tailhook, the recommendations of the chain of command, and the final action taken on that investigation by the Navy. All of that can be released, and then the Senate can decide whether the committee was correct or not. The news media can then make their judgment accordingly.

PROCEDURAL CONSIDERATIONS

In the December 19, 1995, Washington Times, Commander Stumpf's attorney is quoted as stating the committee denied his client the opportunity "to face his accusers, cross-examine them and test the so-called evidence that the committee had collected."

The March 1996 Armed Forces Journal International reported that "Stumpf and Gittins asked to speak to the Senators on the committee, offered to testify, and attempted to discover

what new evidence the committee had uncovered. All requests were refused."

Mr. President, I am informed again by majority staff that the committee received no letter from Commander Stumpf's counsel, prior to the committee action on October 25, 1995, requesting his client be allowed to testify before the committee, nor did counsel for Commander Stumpf submit a request to discover additional information.

The materials provided by the Navy make it clear that CDR Stumpf was well aware that the matter of his promotion was pending before the Committee. On June 30, 1995, he received the statutorily required notice from the Navy that his promotion was being delayed, and he was specifically notified that his involvement in Tailhook was under review by the Armed Services Committee.

The majority staff has advised me that the committee received one letter from CDR Stumpf's counsel, dated August 2, 1995, prior to completion of our review on October 25, 1995. That letter provided counsel's view of CDR Stumpf's military record and the proceedings involving his client in the aftermath of Tailhook. The only specific request of Chairman THURMOND set forth in the letter was to "end the delay in the SASC review." CDR Stumpf's attorney noted that he was available for discussions, but did not make any specific request regarding testimony by his client or discovery of evidence:

> Should you or your staff have any questions, please do not hesitate to call. Further, I would be pleased to review with you or a member of your staff the facts as they were established at the Court of Inquiry.

From the Committee's perspective, this did not constitute a request that his client be permitted to testify at a Committee hearing, nor did it constitute a request for further information about the materials under review by the Committee.

CDR Stumpf's counsel apparently chose to proceed without submitting a specific request for a hearing, without submitting a specific request that his client be permitted to testify, and without submitting a specific request for further details about information available to the Committee. If discussions with individual members or staff raised any questions about the Committee's willingness to entertain such requests, he had the opportunity to provide an unambiguous request in writing. He did not do so. Whether his tactical decisions at the time were in the best interests of his client is not a matter for the Committee to judge.

Each one of those matters, if clearly communicated to the Committee, would have been given appropriate consideration. It is well known that nomination proceedings are not criminal trials. They are not formal evidentiary proceedings. They are designed to assess the fitness of a nominee for higher office. If counsel for a nominee believes that the informality of a nomination proceeding is inappropriate in his client's case, then it is his responsibility to bring his concerns to the attention of the Committee. If he does not do so, it is puzzling for him to now claim that his client was denied rights that he did not request when the matter was pending before the Committee.

RELIANCE ON INFORMATION PROVIDED BY THE NAVY

Commander Stumpf's attorney is quoted in the December 19, 1995, Washington Times as stating that the committee's decision to recommend that he not be promoted was based on "rumor and innuendo and anonymous phone calls."

As the Senator from Indiana said very clearly, that is flat wrong. The committee's recommendation was based on the records of the fact-finding board that reviewed Commander Stumpf's activities relating to Tailhook—the Navy fact-finding board—as well as other documents officially transmitted to the committee by the Navy.

I am informed by the Navy that Commander Stumpf had full opportunity at the fact-finding board to testify, to present evidence, and to cross-examine witnesses.

Mr. President, that is the record that we have been primarily focusing on. The Navy has advised the committee that it has provided all of these materials to Commander Stumpf, so he knows what these materials are. The committee did not rely on rumors. The committee did not rely on innuendo. The committee certainly did not rely on anonymous phone calls.

An op-ed piece by CDR Stump's attorney in the February 2, 1996 Washington Times states that the Senate relies on "largely false and discredited allegations of misconduct collected by the Pentagon inspector general . . . to make their decisions on Navy promotion nominations." That is an inaccurate and incomplete description of the Committee's procedures for reviewing Navy and Marine Corps nominations in the aftermath of Tailhook. After the Navy turned the Tailhook matter over to the DOD Inspector General, the IG conducted an investigation. The results of the investigation were returned by the IG to the Navy for further proceedings, including administrative or disciplinary proceedings where appropriate. DOD/IG materials do not provide the primary source of information used by the Committee. In virtually all cases, including the case of CDR Stumpf, the Committee has relied primarily on material from the proceedings conducted by the Navy after the DOD/IG investigation, as well as related documents provided by the Navy.

It is noteworthy, however, that in at least one well known, contested nomination, many Senators placed significant reliance on information developed by the DOD Inspector General, rather than in a Navy proceeding. That was the nomination of Admiral Kelso to retire in grade, in which the military judge in a Tailhook court-martial, Captain William T. Vest, Jr., opined that Admiral Kelso observed misconduct at Tailhook, whereas the DOD Inspector General, who reviewed the judge's opinion in light of the IG's investigations, concluded that Admiral Kelso did not observe the misconduct. As one who fought hard on the Senate floor for ADM Kelso's confirmation, I do not believe that Navy and Marine Corps nominees would want the Committee to preclude consideration of such material from the DOD/IG.

Commander Stumpf's attorney, in a February 2, 1996, op-ed article, attempted to analogize his client's case to that of Adm. Joseph Prueher. According to Commander Stumpf's attorney in this February 2, 1996, op-ed piece in the Washington Times, "Just last Friday, the Senate failed to vote to confirm Adm. Joseph Prueher as Commander, U.S. Pacific Command. The reason? A few Senators, bowing to feminist pressure, decided to revisit, for the third time, Admiral Prueher's handling of a sexual harassment case while superintendent of the U.S. Naval Academy."

Mr. President, I am sure that the Navy, as well as Admiral Prueher, were just as surprised as I was to learn on February 2 from Commander Stumpf's attorney that Admiral Prueher's confirmation had not gone through. The Senate received Admiral Prueher's nomination on Wednesday, January 10; the Armed Services Committee reported him out of committee on Friday, January 26; and the Senate unanimously confirmed him on Tuesday, January 30, 2 days before the op-ed piece appeared in the Washington Times. The date of the admiral's confirmation, January 30, was the first day the Senate was in session after the nomination was reported out of committee. That is prompt action by any standard.

Moreover, the date of Admiral Prueher's confirmation by the Senate, January 30, was 2 days before Commander Stumpf's attorney wrote in the Washington Times that the Senate was "bowing to feminist pressure."

In the same article, Commander Stumpf's attorney stated: "The Senate now fancies itself as a super selection board, reviewing de novo executive branch promotion decisions for political advantage." That opinion has been echoed by others, such as the statement in the March 1996 Armed Forces Journal International that "Cmdr. Stumpf is being sacrificed on the altar of political correctness."

As I noted earlier in my statement, Senator COATS and Senator BYRD, as

leaders of the Personnel Subcommittee, have the unenviable task of taking the lead in reviewing nominations involving adverse information. I have been chairman of the Manpower Subcommittee. That is the first subcommittee I headed after I became a member of the committee. I know how hard that job is. It is one of the most important jobs, one of the most difficult jobs. I think we owe both Senator COATS and Senator BYRD a great deal of gratitude for the work they do. They have given the committee a serious, sober recommendation in each case based on the merits.

I do not believe that anyone can seriously argue that they or the committee have gained any political advantage by taking on this responsibility. If there is any political advantage attached to it, then someone is going to have to explain it to me. After being in the Senate for 24 years, I cannot think of anything that has less political advantage to it than this tough, hard, but absolutely essential job.

This is not something that the Senate grabbed. This is something that the Constitution of the United States gives to the Senate, a responsibility. We are doing our constitutional duty. If anyone does not think the Senate ought to be involved—"get the Senate out of the Navy"—then they ought to change the Constitution of the United States. This is our duty. It is our duty. As long as I am on the committee, I, for one, will continue to exercise that duty.

Mr. President, the committee has a keen appreciation for the values that differentiate military service from civilian society, the requirements of good order and discipline in the armed forces, and the standards of responsibility and accountability applicable to military commanders—including their responsibility and accountability for the morale and welfare of their troops.

The committee also has a clear understanding that a promotion is not a reward for past service; it is a judgment on the fitness of an officer for higher levels of command and responsibility.

Mr. President, it has been the traditional practice of the Committee on Armed Services to look primarily to the statutes, regulation, and time-honored customs of military service in assessing adverse information on a nominee.

One of those standards is the affirmative obligation of commanding officers, under section 5947 of title 10, United States Code, to demonstrate "a good example of virtue, * * * to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices; * * * and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and general welfare of the officers * * * under their command or charge."

Article 0802.1 of the Navy regulations makes it clear that commanding officers operate under a higher standard of responsibility, and that they are not relieved of that responsibility simply because they are not present during misconduct or a mishap:

> The responsibility of the commanding officer for his or her command is absolute, except when, and to the extent to which, he or she has been relieved therefrom by competent authority or as provided in these regulations. The authority of the commanding officer is commensurate with his or her responsibility. While the commanding officer may, at his or her discretion, and when not contrary to regulations, delegate authority to subordinates for the execution of details, such delegation of authority shall in no way relieve the commanding officer of continued responsibility for the safety, well-being and efficiency of the entire command.

Article 0802.4 of the Navy Regulations places a special responsibility on commanding officers with respect to their conduct and the conduct of their subordinates:

> The commanding officer and his or her subordinates shall exercise leadership through personal example, moral responsibility and judicious attention to the welfare of persons under their control or supervision. Such leadership shall be exercised in order to achieve a positive, dominant influence on the performance of persons in the Department of the Navy.

Mr. President, these are not post-Tailhook standards. These are not "politically correct" rules of the nineties foisted on the Navy by "feminist pressure." Those standards were in effect at the time of Tailhook and reflect bedrock principles of good order and discipline.

The committee also looks to the standards in section 654(a) of title 10, United States Code, which states:

> (8) Military life is fundamentally different from civilian life in that—
>
> (A) the extraordinarily responsibilities of the armed forces, the unique conditions of military service, and the critical role of unit cohesion, require that the military community, while subject to civilian control, exist as a specialized society; and
>
> (B) the military society is characterized by its own laws, rules, customs, and traditions, including numerous restrictions on personal behavior, that would not be acceptable in civilian society.
>
> (9) The standards of conduct for members of the armed forces regulate a member's life for 24 hours each day commencing upon entry on active duty and not ending until that person is discharged or otherwise separated from the armed forces.
>
> (10) Those standards of conduct, including the Uniform Code of Military Justice, apply to a member of the armed forces at all times that the member has a military status, whether the member is on base or off base, and whether the member is on duty or off duty.

Those findings reflect some of the most fundamental, enduring values of military service.

Mr. President, the Armed Services Committee has reviewed Navy and Marine Corps nominations in the aftermath of Tailhook, including CDR Stump's promotion, in the context of these well-known military standards. In light of these standards, it would have been irresponsible for the Committee to ignore adverse information related to a nominee's conduct or leadership at Tailhook '91, set forth in information provided to the Committee by the Department of Defense—particularly in view of the military significance of that event.

Tailhook 1991 was designed and promoted to showcase the aviation components of the Department of the Navy. The Navy actively encouraged members to attend to enhance their professional military development.

The Navy provided significant financial, logistical, and personnel support—including featured presentations by the Secretary of the Navy, the Chief of Naval Operations, the Assistant Chief of Staff (Air Warfare), and numerous other Navy and Marine Corps officers and civilian officials. Many military personnel traveled under government orders, which paid for their transportation, food, and lodging. Over 1,700 were transported at government expense,

Tailhook 1991 was a showcase event where all officers, particularly those in command, were under an obligation to ensure that their conduct, and that of their subordinates would represent the very best in the U.S. Navy and U.S. Marine Corps. The failure of some to demonstrate appropriate standards of conduct and leadership is an appropriate consideration in assessing an officer's fitness for promotion.

Mr. President, I also reject any suggestion that the committee acted out of political motivation or as a result of outside pressures.

Mr. President, I personally talked to every Secretary of the Navy since Tailhook came up and every Chief of Naval Operations since Tailhook came up. I have cautioned them against overreacting. I have cautioned them against denial of due process for individuals accused of inappropriate behavior. I have cautioned them against unlawful command influence. I have done that personally. I have felt it was my responsibility to counsel the Navy not to overreact and to give to their own members the kind of due process that they deserve.

During my tenure as chairman I assured every civilian and military leader of the Department of Defense and the Department of the Navy involved in nominations that the committee would carefully consider each nomination on the merits, and that they should not hesitate to recommend promotion in any case where the Navy deemed it appropriate.

The committee has ensured that when the Navy recommends promotion

in a case involving a Tailhook certification, we are provided with the Navy's official information, not rumor, innuendo, or anonymous information.

When the committee has received information from the Navy bearing on an individual's conduct or leadership at Tailhook, we have considered it carefully and judiciously on a case-by-case basis.

Let us look at the facts. Since Tailhook, the committee has approved 36,839 Navy nominations, 6,431 Marine nominations, a total of 43,270 nominations in the Navy and Marine Corps since Tailhook. During that period, how many have we not recommended because of Tailhook matters? A total of 8; 8, a total of 8. You would not think that from some of the hysteria going on in some of the news coverage, particularly editorials that I have seen.

Let me repeat, the committee has approved 43,270 Navy and Marine Corps nominations and turned down only 8 since Tailhook came up. During the same period, 15 officers who were the subject of administrative action by the Navy as a result of Tailhook have been confirmed by the Senate. These figures clearly demonstrate that the committee has reviewed each of these nominations involving a Tailhook certification on the merits.

While reasonable people could come to different conclusions on those who were recommended, as well as those who were disapproved, the fact is, we have not indiscriminately rejected anyone who had been investigated in connection with Tailhook. I have personally taken the floor of the Senate to try to get nominations through and have succeeded virtually in every case, with the help of the committee and the good judgment of the Senate, that were bitterly opposed here on the floor relating the Tailhook.

I think people ought to have a little knowledge of history. I do not expect people to understand everything that has been done, but there ought to be some slight knowledge and acknowledgement of the history of how we handled this whole matter of Tailhook.

Someone ought to recall also the Secretary of the Navy decided that the Navy botched this investigation so badly that he himself, back in 1992, in a previous administration, removed the Navy from the investigative responsibilities because it had been so badly botched.

It is also important to contrast the Senate's action with the results of action taken within the executive branch. As a result of the actions taken by the Navy and Marine Corps, 39 officers have had their careers adversely affected. Twelve officers were rejected by promotion boards, another 12 who were selected by a board subsequently were removed from a promotion list within the executive branch, and another 15 officers resigned or retired before being considered for promotion after receiving adverse administrative action by the Navy. In other words, the number of officers whose careers have been adversely affected by the Navy outnumbers the officers returned by the Senate by a ratio of more than 4 to 1.

Mr. President, this Committee has a strong record of support for military nominations, even in the face of considerable criticism. We have been willing to take the political heat. We did it in the case of Admiral Kelso. We did it in the case of Admiral Mauz. We did it in the case of Admiral Prueher. We have done it in the case of 15 nominees who were confirmed even though administrative action had been taken against them as a result of Tailhook. There was no political advantage in our action, but we did it because it was the right thing to do.

OVERSIGHT, LEADERSHIP, AND RESPONSIBILITY

Mr. President, the Armed Services Committee has a vital oversight role over the Armed Forces, including matters involving nomination and promotions. The Navy failed to provide the Armed Services Committee with the information required to assess Commander Stumpf." fitness for promotion prior to the Senate's vote on his nomination. It was incumbent on this committee to conduct a review of that promotion when information was belatedly turned over to the committee.

I am informed by majority staff that, prior to the Committee's October 25, 1995, decision to recommend that Commander Stumpf not be promoted, his attorney did not raise a legal objection to the propriety of the committee's review. Although the obvious outcome of any such review would be a communication to the Secretary of the Navy regarding the merits of Commander Stumpf's promotion, counsel did not raise a legal objection to any communication from the committee to the Secretary. Counsel for Commander Stumpf was well aware of the committee's review of his client's promotion, as reflected in his August 2, 1995, letter to Senator THURMOND discussing the review and the action taken by the Secretary of the Navy to delay Commander Stumpf's promotion. The letter vigorously supported the merits of his client's promotion and requested that the committee complete its review. The letter, however, did not state any legal objection to the committee's review, the action of Secretary Dalton in delaying the promotion, or to any communication from the committee to the Secretary on the merits of the promotion.

As I noted earlier, the committee's letter of November 13, 1995, specifically advised the Secretary of the Navy that:

> The committee recognizes that, in light of the Senate having given its advice and consent to Commander Stumpf's nomination, the decision to promote him or not to promote him rests solely within the executive branch.

Let me repeat that, Mr. President. We made it very clear that "the decision to promote him or not to promote him rests solely within the executive branch." Mr. President, those were not idle words. We fully recognized that the Secretary of the Navy—acting under a delegation of authority from the President—has unfettered discretion under section 629 of title 10, United States Code, to remove or not remove the name of an officer from a selection board list.

On December 22, 1995, Secretary Dalton directed that Commander Stumpf's name be removed from the promotion list.

Mr. President, I would like to make my own position clear.

These are tough decisions. I do not quarrel with anyone who comes to a different conclusion. They involve subjective judgment. Different people draw the line between right and wrong in different places. Based upon the information available at the time, we made our decision. I made my judgment about right and wrong, and I made my judgment about the question of leadership. That judgment was based on the recommendation, the very thoughtful recommendation, of Senator COATS and Senator BYRD.

Others may have a different definition of right and wrong. Others may have a different definition of leadership. They have every right to their perspective. All of us have some obligation to strive for consistency in drawing the line, consistency between officers who may have been involved in similar circumstances. To draw one line for officers in the Navy and another line for officers in the Marine Corps relating to the same event, to me, is totally unacceptable.

The promotion process must ensure that all officers meet the high standards of conduct and leadership that demonstrate potential for leadership at a higher grade. This is appropriate not just for the Navy, but for the Army, Air Force, and for the Marine Corps. Does the Navy now want to set a standard for leadership lower than the Marines? Does the Navy want to set a standard of leadership lower than the Army? Does the Navy want to set a standard of leadership lower than the United States Air Force? That is a question that the Navy leadership has to answer.

Mr. President, if the Navy's withholding of information prior to the Senate's confirmation of Commander Stumpf was the result of administrative error, then the Navy's administrative process needs review and overhaul. These administrative errors deprived Secretary Perry, the Secretary of Defense, of the information he needed to make his recommendations to the U.S.

Senate and to the President. These administrative errors deprived the Armed Services Committee of the information that we needed to make a recommendation to the Senate. These administrative errors deprived the Senate of the information it needed prior to deciding whether Commander Stumpf should have been confirmed.

In closing, Mr. President, I make the following points: First, my review of the material provided to the committee by the Navy, including the record of the conduct, review, and disposition of the proceedings of the factfinding board confirms my assessment that Senator COATS' recommendation to the committee was sound, and that the committee's October 25, 1995, recommendation that Commander Stumpf not be promoted was appropriate.

Second, it was appropriate to the committee to communicate its recommendation to the Secretary of the Navy, particularly in light of the Navy's failure to provide the committee with the information it had pledged to provide prior to the committee's recommendation to the Senate that Commander Stumpf be confirmed.

Third, it was appropriate for the committee to remind Secretary Dalton that he had unfettered direct discretion to promote or not promote Commander Stumpf, which we did in the letter. If Secretary Dalton believed in December that Commander Stumpf's promotion was warranted, he could have promoted him at that time. The letter made that absolutely clear.

Fourth, the executive branch has an obligation to conduct a thorough review of adverse information with respect to all nominations, including but not limited to Tailhook. In terms of the issues of conduct and leadership bearing on the individual's fitness for promotion, the question in Commander Stumpf's case, for example, was not whether he was guilty of a crime, but whether he met the standards of leadership that would qualify him for a promotion to a higher grade.

Fifth, the executive branch must strive for consistency in its approach to military nominations, and consistency is essential for fairness. Although each proposed nomination must be judged on its own merits and its own facts, it is critical that careful attention be paid to issues of consistent treatment, particularly when adverse information is related to a single event such as Tailhook. The Navy leadership has effectively forced 39 officers to retire or resign or has removed their names from promotion lists for Tailhook-related matters. The committee has a very difficult time justifying favorable action on other nominees whose conduct or leadership deficiencies appear to be worse than those who were not nominated or who were forced to retire or resign by the United States Navy.

Sixth, the Navy should determine whether Commander Stumpf's attorney is serious about the public release of information concerning his client. If so, the Navy should not be selective in the release of information. The Navy should make available a complete record of proceedings concerning Commander Stumpf in the aftermath of Tailhook, including the full record of proceedings, review, recommendations, and action on the fact-finding board. If they do, there will be no mystery anymore and everybody can make their own considered judgment.

Seventh, after learning that the Navy had failed to provide the committee with information about Commander Stumpf, prior to the committee's action on his nomination, the committee requested the Navy to provide "a complete description of the conduct, review and disposition of the allegations concerning Commander Stumpf." The Navy provided information to the committee in response to this request. Subsequent to the committee's October 25, 1995, meeting on Commander Stumpf's nomination, the Navy has provided the committee with additional information, including information on the review and disposition of the allegations concerning Commander Stumpf, which we asked for to begin with. The Navy needs to explain why, after failing to provide the commitee with timely information prior to the confirmation of Commander Stumpf by the Senate, the Navy subsequently did not provide the committee with complete information on the review and disposition of the allegations.

Finally, Mr. President, and what I number as eighth, section 629 of title 10, United States Code, provides that "An officer whose name is removed from a list continues to be eligible for consideration of promotion." As noted in the statement issued by the committee on March 13 with respect to Commander Stumpf, quoting from the letter, "If he is nominated again for promotion to captain, the committee will give the nomination the same careful consideration it would give to any nominee."

I certainly concur in that. For my part, I would carefully consider any information that might be presented by Commander Stumpf or on his behalf. I would consider the full record of information provided by the executive branch, and I would certainly take into consideration the views of my colleagues on the Armed Services Committee on both sides of this issue, before reaching a final conclusion on the merits of such a nomination, should it be submitted to the Senate.

Mr. President, I close by saying I do not believe that the committee held Commander Stumpf responsible for the Navy's administrative errors. If Commander Stumpf is nominated in the future, I would separate these matters, and I would view the Navy's administrative errors as separate and apart from Commander Stumpf's nomination.

EXHIBIT 1

ROBERT E. STUMPF,
2616 BOUSH QUARTER,
Virginia Beach, VA, February 13, 1996.

Hon. STROM THURMOND,
Chairman, Senate Armed Services Committee,
U.S. Senate, Washington, DC.

DEAR SENATOR THURMOND: As it appears that the Committee continues to have lingering concerns about my promotion and my attendance at the Tailhook 1991 Symposium, it may be beneficial to the Committee to hear from me personally. Accordingly, I respectfully request to meet with the Committee in closed session at the earliest opportunity to address Committee questions or concerns.

Very truly yours,

ROBERT E. STUMPF,
Commander, USN.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, March 14, 1996.

Commander ROBERT E. STUMPF,
2616 Boush Quarter, Virginia Beach, VA.

DEAR COMMANDER STUMPF: This is in response to your letter dated February 13, 1996. It was first received by Committee via telefax on March 13, 1996.

I understand your request to appear before the Committee in closed session. However, at present there is no nomination before the Committee concerning you. Should a nomination concerning you be presented to the Committee in the future, your request will be given appropriate consideration.

Sincerely,

STROM THURMOND,
Chairman.

Mr. BYRD. Mr. President, I listened with great interest to the remarks by both Mr. COATS, the distinguished Senator from Indiana, and by Mr. NUNN, the distinguished Senator from Georgia.

First of all, with reference to the work that has been done on this particular subcommittee, I want to pay tribute to the Senator from Indiana, Mr. COATS. As far as I am concerned, between the two of us, he has done by far the major part of the work. He has shouldered the workload and he has done it professionally and with great skill and exceedingly well. I admire his courage for taking the position that he is taking on this particular issue here this evening.

Mr. President, with reference to the Senator from Georgia, I came to the Senate 38 years ago, at which time there was a very distinguished Georgian by the name of Richard Brevard Russell, who was chairman of the Senate Committee on Armed Services. I became a member of that committee 2 years after I had become a Member of the Senate, and I served with Senator Russell on that committee.

In these 38 years, Mr. President, I have seen some great chairmen of that committee, chairmen from both parties. But in my considered judgment—

and I realize that I have my own flaws and I am capable of erring in my judgment—the two greatest chairmen of the Armed Services Committee in my 38 years here have been those two distinguished Senators from the State of Georgia. Senator Richard Russell was someone whom I adopted as my mentor. He never knew that, but in my own heart I admired him so greatly that I tried to follow in his footsteps and study the rules and precedents of the Senate. It was my resolution which, when adopted by the Rules Committee of the Senate and by the Senate, brought about the naming of what was then the Old Senate Office Building, the Richard Brevard Russell Building. That is how much I admired Senator Russell.

I admire this distinguished Senator from Georgia, Senator NUNN, who will be retiring from the Senate at the end of this year, no less, insofar as his skill is concerned and handling of the work of the committee. I have marveled at the organization of the committee and the organization, work, and dedication of the Senator from Georgia. I have often said to others that Senator NUNN is probably the finest chairman of the committee that we have had in the Senate.

Now, Napoleon once had a general staff officer in his army by the name of Michel Ney. Well, Marshal Ney was cut off from the rest of the army of Napoleon, and he had to fight his way through thousands of Cossacks, which he did. He came to the River Dnieper and he crossed it. In so doing, he lost all of his guns, but he finally was reunited with the other units of Napoleon's army. When Napoleon heard that Ney had escaped and had returned, he was overjoyed. He said to some of the other officers, "I have 400 million francs in the cellars of the Tuileries, and I would gladly give them all for the ransom of my good companion in arms." That was the old palace in Paris, which later burned down. "I have 400 million francs in the cellars of the Tuileries, and I would gladly give them all for the ransom of my good companion in arms." That is how much Napoleon prized this officer, General Ney.

Well, I feel that way about Senator NUNN, and I am proud to be associated with him and with the distinguished Senator from Indiana in their remarks here today. I will be very brief.

I wish to associate myself with the remarks made by the distinguished Senator from Georgia, the ranking member of the Committee on Armed Services, on the matter of the promotion of Commander Robert Stumpf, U.S. Navy.

It is very clear to me that the committee has acted with great responsibility in the handling of the so-called Tailhook 1991 events, and attempted to protect the rights of the individuals involved while working closely with the Navy and the Department of Defense to get to the bottom of the events that did occur. It is vitally important that the Navy be consistent and forthright in its consideration of the individual cases that still are pending, and take every step to insure that the lessons learned from the scandal can be absorbed and remedies can be implemented.

In the light of these considerations, it is disappointing to see the kind of recent attacks that have been leveled at the Armed Services Committee by the media, and by Commander Stumpf's attorney.

I believe that Commander Stumpf's nomination was clearly prejudiced by the incredible administrative ineptness that accompanied his nomination. According to the well-established procedures that had been put into place by the committee, in cooperation with the Navy, adverse information that was associated with Tailhook should have been forwarded to the committee when this nomination for promotion to captain was first provided to the committee. It is extremely unfortunate that only after the fact, that is, after the nomination was approved by the Senate, did the committee learn of the results of a board of inquiry into Commander Stumpf's participation at Tailhook.

The issue that is at the heart of this matter, Mr. President, is the question of consistency of standards by which we hold commanding officers in the Navy accountable for their actions. Senator NUNN has itemized in detail the standards that exist in the law and in Navy regulations, and they are engraved on the long honorable traditions of the Navy. Commander Stumpf, like all commanding officers, bears a heavy responsibility not only for his own actions, but also for the actions of the officers and men under his command. That is what this unfortunate affair is really all about.

It was William Wordsworth who said, "No matter how lofty you are in your department, the responsibility for what the lowliest assistant is doing is yours."

Frederick the Great of Prussia said, that, "The quality of the troops depends directly on that of the officers: a good colonel; a good battalion."

That is why the committee acted properly in holding up those standards as a mirror by which to judge the qualifications of commanding officers for further promotion, given what happened in the hospitality suites of the Las Vegas Tailhook convention hotel. It is not a pretty picture, and the record in the case of Commander Stumpf is complete enough, in my judgment, to call his nomination into serious question. Given the visibility of Commander Stumpf, and his professional achievements as an airman in combat in Desert Storm, and as a role model as the flight leader of the Blue Angels Navy Demonstration Team, what we do here in terms of his promotion is all the more important. It is the job of the committee to reconcile this matter and make a considered judgment based on standards, not on personalities.

Additionally, while Senators may well differ in their judgment as to the seriousness of the charges brought against Commander Stumpf regarding his performance as a commanding officer during the Tailhook convention, the failure of the Navy to provide the committee with all pertinent information readily available to the Navy, makes the situation far worse for his nomination. We have the appearance of a coverup of vital information bearing on his nomination. How could such an administrative error have, in good faith, occurred? Clearly the information was pertinent to his nomination, in that the committee did inform the Secretary of the Navy that it would not have agreed to Commander Stumpf's promotion, had it been provided the information at the time when the Stumpf nomination was pending before the committee.

I think it is important to look further into this vital omission—and I have not spoken with the chairman of the Personnel Subcommittee about this—but it would be my hope that consideration might be given to having the DOD inspector general investigate the matter. If there is a flaw in the way in which, after all this time and furor over Tailhook, the paper trail is provided to the Committee, then it should be corrected. If there was an intention on the part of one or another element of the Navy bureaucracy that thought it was doing Commander Stumpf a favor by not providing the committee with this information, then it should be known that a great disservice was done to Commander Stumpf and to the Navy by the omission.

Mr. President, as the Senator from Georgia has pointed out, Commander Stumpf has engaged an attorney who seems to think that his client has something to gain by attacking the procedures and integrity of the Armed Services Committee. The usage of the terms "McCarthyism," "blackmail," and operating on the basis of "rumor" in describing the committee's actions in the matter are ludicrous, and further prejudice his client's case. Commander Stumpf, in my opinion, would be far better off with no attorney than with the advice he is currently getting.

The committee has decided to keep the record of the nomination confidential, but if further action is warranted, such as a resubmission by the Navy of the nomination, then I think the record should be open for all to see. Lay it all out. It should be opened entirely.

Additionally, Commander Stumpf has asked for a hearing by the committee, and I think that request should be granted if his nomination is resubmitted by the Navy. But the hearing and the record should be out in the open. Let the sunshine in.

Commander Stumpf's lawyer has openly attacked the committee, there is a campaign underway to impugn the procedures of the committee. The committee has little choice but to open the record. All the facts should be on the table. Senators can judge for themselves whether the Navy's own standard of conduct for commanding officers was breached substantially enough for the nomination to be rejected.

Mr. President, fame is a vapor; popularity, an accident; riches take wings; those who cheer today may curse tomorrow; only one thing endures—character. And it is the character of the Navy here that is at stake.

I would not want to send my grandsons into an organization that I thought would destroy character. I would expect the organization to be one that would build character. And it is the character of the Navy that we are concerned about.

Mr. President, I thank again Senator NUNN, and I thank Senator COATS for the fine work that they have done. And I regret that they have been made to suffer as a result of their efforts to do the right thing by all concerned.

Mr. EXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

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

Mr. President, first I would like to be associated with the remarks in this regard by the chairman of the Personnel Subcommittee, my friend and colleague from Indiana, and with the statement that was made by my longtime friend and seatmate, Senator NUNN from Georgia, and, last but not least, the excellent summation just given to the U.S. Senate by a Member of this body who we all cherish and recognize for his sound leadership and common sense over the years.

Mr. President, I do not take any pleasure at all in making the remarks that I am about to make. It would have been much easier to just skip it and not say anything. But I am very much moved by the unfair attacks on the Armed Services Committee on which the four Members now in the Senate have served for a long, long time. For myself, this will be my 18th year. And I come to the floor to give my views as briefly as I can. I have no written statement, but I am speaking from my heart on this matter that I think is being glossed over.

Mr. President, I have not been happy with the majority on the committee, both Democrats and Republicans, for what I feel has been a folding like an accordian into the spotlight of pressure by the press that has been brought on this particular issue.

I take no pleasure in this, Mr. President, because as a veteran of World War II—and 2 years of that overseas—I was taken over there by the U.S. Navy, and they brought me back. I have a very soft spot in my heart for the Navy of the United States of America. There is no better navy anywhere—nor do I suggest there ever has been—than the men and women that make up the U.S. Navy today. And I am proud of all of them. But I wish to raise some questions and cite some examples tonight on what I feel are some holes, if you will, in some places—not a lot—but in some places in the top leadership of this Navy that have been spotted and brought out into the light with several events of the last few years.

Talking about the Navy, I am not going to go into my record with votes and the leadership positions that I have taken for the Navy in a whole series of areas. I guess the only serious difference I ever had with regard to some of the initiatives of the U.S. Navy was over the reincarnation of the battleships, which I said was nonsense at the time. It was a multimillion-dollar fiasco. We brought four battleships back into commission when we obviously did not need them. But, under the leadership of the Navy, the Congress of the United States was convinced otherwise. We are still paying for that costly mistake. But do we not all make mistakes? I think I was right on that, but I believe that event was the only time in my 18 years of service in the Armed Services Committee that I had serious disagreement with the U.S. Navy.

I emphasize again that I do not condemn the Navy as a whole. But I am here to support the outstanding efforts by Senator COATS, Senator NUNN, Senator BYRD, and others who have taken on the dragon in this case—the dragon being certain key parts of leadership of the U.S. Navy. That is not easy to do, but it is something that has to be done.

I cite, for example, that—while I think Tailhook, we can all agree, was not one of the finer moments of the great history of the U.S. Navy—it may be that it has been overshadowed, and I join with Senator NUNN in his comments. I have heard him say it. Let us not overreact to things of this nature. But we have to act. That is part of our responsibility in the Armed Services Committee.

I stood on this floor to give an example of how in Tailhook and everybody within 100 miles of Las Vegas during that weekend, that riotous weekend, I might say, of "fun loving fun," I guess, by primarily some of the officers of this man's Navy—and sometimes boys will be boys—leadership people should not be boys, and that is my concern and that is my major problem without condemning any of them or all of them.

I have not been one of those who sanctimoniously says it was such a terrible thing that we have to do something about it. I stood at that desk in the Chamber and provided the leadership for the Armed Services Committee with a lot of serious debate with regard to not retiring a very famous, very capable, top leadership man in the U.S. Navy, an admiral who happened to be at Tailhook but was not involved in any of these things. And I stood there and took the advice of SAM NUNN and others of saying let us keep this in perspective. So we retired that outstanding admiral and did not take away his top-grade retirement as some in this body wished to do. So I simply give that as an example that this Senator is not consumed by Tailhook, but I am concerned about Tailhook.

I emphasize once again that we have a great Navy, but some in the leadership of that great organization have let that organization down in recent years. Let me cite one or two examples. I do not know whether they have been talked about by my friends and colleagues before or not. There certainly has been, though, a most unfortunate series, unfortunate series, Mr. President, of serious and distressing shortcomings in part of the U.S. Navy in the last few years.

Without going into any detail, I would simply cite the problems of cheating and scandal and sex at the Naval Academy in Annapolis that we finally seem to be getting turned around, but there was too much of it. I would simply say that one of the most distressing things that I ever saw practiced by certain select leadership, not everybody, was the coverup of the blowup of the *Iowa* battleship, one of those four that I referenced earlier that I thought should never have been brought back in any event.

Just so you will remember, my colleagues in the Senate, that was the case where after a high-level naval investigation of the blowup on the battleship *Iowa* that caused 130 some deaths. The Navy leadership, part of it, came forth with a program that it was the responsibility of two homosexuals. Well, it turned out later when some of us wanted proof, that the two homosexuals were not involved at all; it was a typical case of the old-boy network working very effectively in part of the coverup. They were not successful, but they almost were.

I would simply like to mention in that regard also the glossy coverup, or not so glossy coverup, that the U.S. Navy, some of its leaders, did after Tailhook was exposed in the press. We would not have had the difficulty that we are in today with Commander Stumpf nor would he have his difficulties at least to this extent were it not for the fact that key leadership in the U.S. Navy again fouled up by not following a very simple procedure that

was well-known to all of the leadership of the U.S. Navy when Commander Stumpf's nomination came up, and I am sure that Senator COATS and Senator NUNN went into that in great detail.

Then there was another serious situation with regard to the spy scandal of a marine in Moscow in our Embassy. That was a tough blow.

I simply say, Mr. President, that all of these attacks that have been made on the integrity of the Armed Services Committee in the press are nonsense. And for rules and reasons, those of us who are knowledgeable of the full extent of this situation for the protection of the innocent and not to inflame the story are not privileged to talk about it in detail. One editorial that I read said that was McCarthyism, keeping the secret to ourselves like Joe McCarthy did. Well, those of us who have had the top secrets of the United States of America with us and live with us all the time we have been in the Senate know our responsibility and know how to live up to the commitments that we make while editorial writers are not so constrained.

I thought one of the most disgusting articles that I read on this was by the Detroit News. I do not know anything about the Detroit News except that they printed an editorial on Friday, March 15, 1996: "Commander Stumpf Gets Blacklisted." They then go on to launch an all-out attack on Senator CARL LEVIN, who most of us on both sides of the aisle recognize as one of the most decent, most fair, sound men in the Senate. But the Detroit News was very critical. Let me quote from that:

> Senator Levin and his aides refused to discuss Commander Stumpf's case or the workings of the Armed Services Committee, or anything else for that matter. Citing his allegiance to striking unions, he refuses to talk to the News but his committee colleagues lack so handy an excuse.

CARL LEVIN is one of my best friends in the Senate. I came here with him. And for the Detroit News to attack that fine U.S. Senator in the manner they did is unconscionable. And many other members of the press including our own Navy Times, of course. The Navy Times in an editorial of March 11, 1996, says "Commander Stumpf is a Marked Man:"

> The Senate can strike a blow for naval aviation safety right now by dropping the Tailhook "acid test" now used to block some aviator promotions.

And at the bottom of the editorial, the last paragraph:

> But Tailhook was nearly 5 years ago. It's time for the sore to heal. It's time to abandon that list and help the men and women of naval aviation get back to the basics of safe flying.

Five years is not very long. I also cite, for the record, an excellent statement in this regard made by a nonmember of the Armed Services Committee, Senator GRASSLEY of Iowa, printed in the CONGRESSIONAL RECORD of March 13, 1996, on S. 1999.

Senator GRASSLEY goes on to say that he feels that the flagging of officers who were promoted, who were investigated, should be and should continue to be brought to the attention of the Armed Services Committee. And I agree.

That does not mean, as Senator COATS and Senator NUNN and Senator BYRD have pointed out, that we blacklist these people at all. That is not the way we work. I simply say that the major reason that Commander Stumpf has had some trouble was, once again, the top leadership of the U.S. Navy failed to do the routine thing when they submitted Stumpf to the Armed Services Committee for us to discharge our responsibilities that we have sworn to uphold. They just forgot.

It was a legitimate error. I do not believe it was intentional, but it was another error, another shortcoming of some of the leadership of the U.S. Navy.

I simply say that the Armed Services Committee, nor any of its members, are at fault. Yet, our integrity is being questioned because of what we collectively did and thought was our duty.

Let me close, if I might, by giving my own personal view, without detailing any of the information at my disposal that, for good reasons, I am sworn to protect. I know most or all of the details, some of them sordid, about Tailhook. I happen to feel that Commander Stumpf may be being overly criticized for some things. It is true, in the opinion of this Senator, that he was not in that room at a time when an act was taking place that I think would have probably guaranteed that he not be recommended for promotion. He got out in time. But he did not do anything about anything that he saw going on.

But I simply say and emphasize once again that I am not one of those who feel that Commander Stumpf should be blacklisted, should be eliminated for consideration—and I emphasize consideration—by the Armed Services Committee in carrying out its responsibilities. My view is that circumstances following the unfortunate foul-up by the top echelon in the U.S. Navy in not giving us the information is the main reason for the problem.

But what happened after that? And this is something that I feel very strongly about. After that happened, we began to see articles appearing, although none of the authors came to see me. The old boy network took over for a top gun.

Let me emphasize that again. The old boy network took over for a top gun and dedicated themselves to seeing, as quickly as possible, that the promotion was granted.

I think—and I am very much upset with Commander Stumpf—that he did not take the first logical step that he could, should, and had the right to take, by appealing to a board that looks after these things, called the correction board. No, he bypassed that, because the other top guns and their supporters went to work by lobbying.

So it seems to me that if and when I have a responsibility to discharge, as one member, my duties as one member of the Armed Services Committee, I would not, having known what I know, interfere with Stumpf's promotion on the basis of Tailhook. Some other Members may not see it that way. But I am very much concerned about an individual that we look to, and certainly is one of the finest performing officers that we have today in the U.S. Navy, there is no question about that, but there are other things that we look for when we go through the promotion scheme. In all likelihood, Commander Stumpf, if and when he is promoted—as I think he will be, eventually, to captain; he is very likely to become an admiral someday. There are lots of things beside your ability to fly and your courage in battle that play into the promotion role.

As much as anything else, I simply say that as far as this Senator is concerned, the hiring of a lawyer without going through the proper procedures is a step in the wrong direction and emphasizes what I am most concerned about in this particular matter, and that is that the Navy, unto themselves, with the machoism that they show time and time again, decided they were going to get the Armed Services Committee, regardless of our faithfulness, regardless of what we have done, regardless of what we will do as members of that committee in the future.

And the crowning blow, although I recognize that he has a right to do it, was a Washington Post news story of March 19 that I will submit for the RECORD. The headline is "Tailhook Figure Files Suit Over Navy Promotion." Going to the courts, hiring a lawyer to get what he wants and is probably entitled to, it seems to me was not the wise way to proceed.

I ask unanimous consent the article be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. EXON. Some will disagree with me, probably, about Commander Stumpf. But the main reason for my appearing on the floor tonight was to try to set the record straight as to the legitimate role that the Armed Services Committee has played in this matter. We played the role right by the book.

I happen to feel, when Commander Stumpf comes before us again, he may be approved. He might get my support. But I will be asking some questions about why the lawsuit, why the full-

court press by some of his friends, trying to discredit, by their actions, the legitimate steps and actions and decisions made by the Armed Services Committee?

Mr. President, I think we have not heard the last of this matter. I think it is just another bungled handling of a situation by certain top leadership in the U.S. Navy, and I will simply say to Commander Stumpf that had the information been furnished to us when it was not about what happened, or that he was even at that Tailgate party 5 years ago, I would have voted to send Stumpf on through after I took a look and had a thorough briefing on what the allegations against him were. I do not think they were that serious.

But the U.S. Navy is the one that caused Commander Stumpf his problem. His friends are in the Armed Services Committee.

Mr. President, I yield the floor.

EXHIBIT 1

TAILHOOK FIGURE FILES SUIT OVER NAVY PROMOTION

A former commander of the Blue Angels squadron, who was cleared of wrongdoing in the Tailhook scandal, has accused Navy Secretary John H. Dalton of improperly blocking his promotion to captain.

In a suit filed Friday in federal court in Alexandria, Cmdr. Robert E. Stumpf said Dalton bowed to political pressure from Capitol Hill. Stumpf, stationed at Oceana Naval Air Station in Virginia Beach, asked that he be given his promotion as of July 1995.

Stumpf's was one of the most high-profile cases resulting from the 1991 Tailhook convention of Navy aviators, in which dozens of women and female officers complained of sexual harassment. A three-officer panel found that Stumpf left a Las Vegas hotel suite before a stripper performed oral sex on an officer.

The suit said Congress approved Stumpf's promotion after Dalton inadvertently failed to notify Capitol Hill of Stumpf's Tailhook connection. Dalton, pressured by the Senate Armed Services Committee, withdrew Stumpf from a promotion list in December.

The suit said federal law allows a promotion approved by Congress to be canceled only if an officer "is mentally, physically, morally or professionally unqualified."

MORNING BUSINESS

Mr. COATS. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 5 minutes each.

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

COMMENDING THE PARTICIPANTS IN THE SOUTH DAKOTA HIGH SCHOOL BOYS' BASKETBALL TOURNAMENT

Mr. DASCHLE. Mr. President, today I want to commend the hard work, competitive spirit, and teamwork recently exhibited by thousands of young people across South Dakota during the State High School Boys' Basketball Tournament.

Each year during late February and early March, towns from across the State come together in support of their high school basketball teams in district, regional, and State tournaments. This exciting period culminated last week with three teams from across South Dakota winning State championships in their respective divisions.

There is a tremendous amount of pride that each community in South Dakota feels for its high school sports teams. Having grown up in one of those communities, I know that each time a high school team is successful, its community glows with the same accomplishment. Communities like these are still proud of their young people's abilities, their hard work, and their determination to work together and achieve a common goal, both on and off the court.

Today, I would like to congratulate all of the teams who participated in this year's tournaments. In particular, I would like to commend the high schools of Warner, Douglas, and Mitchell for having earned their respective State boys' basketball championship titles in 1996. Clearly, these schools exemplify the commitment to excellence and teamwork that all South Dakota high schools share with their communities.

HOW MUCH FOREIGN OIL BEING CONSUMED BY UNITED STATES? HERE'S TODAY'S WEEKLY BOX SCORE

Mr. HELMS. Mr. President, the American Petroleum Institute reports that, for the week ending March 15, the U.S. imported 7,145,000 barrels of oil each day, 752,000 barrels more than the 6,393,000 barrels imported during the same period a year ago.

Americans now rely on foreign oil for more than 50 percent of their needs, and there are no signs that this upward trend will abate.

The increasingly dangerous U.S. dependency on foreign oil must be addressed by those who care about restoring domestic production of oil—by U.S. producers using American workers.

The American people should consider the economic calamity that will occur if and when foreign producers shut off our supply, or double the already enormous cost of imported oil flowing into the U.S.—now 7,145,000 barrels a day. We must not delay in seeking to solve this troubling problem.

THE BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, 4 years ago when I commenced these daily reports to the Senate it was my purpose to make a matter of daily record the exact Federal debt as of the close of business the previous day.

In that first report—February 27, 1992—the Federal debt the previous day stood at $3,825,891,293,066.80, as of the close of business. The point is, the Federal debt has since shot further into the stratosphere.

As of yesterday at the close of business, a total of $1,233,906,465,897.14 has been added to the Federal debt since February 26, 1992, meaning that as of the close of business yesterday, Wednesday, March 20, 1996, the exact Federal debt stood at $5,059,797,758,963.94. (On a per capita basis, every man, woman, and child in America owes $19,131.71 as his or her share of the Federal debt.)

FRANKLIN N. MEISSNER DAY ON THE SOUTH SHORE

Mr. KENNEDY. Mr. President, I am honored to take this opportunity to pay tribute to one of Massachusetts' finest citizens, Franklin N. Meissner, and his contributions to the business community on the south shore of Massachusetts.

Next Tuesday, March 26, the South Shore Chamber of Commerce will be honoring Frank Meissner, who is the chamber's past chairman. The south shore chamber is currently the second largest chamber of commerce in Massachusetts, and it is also one of the largest suburban business organizations in the country. With its substantial resources and its committed membership, the chamber has been an instrumental factor in promoting economic growth and community development that benefits all families in southern Massachusetts.

Frank Meissner has been deeply involved in all of these initiatives and he deserves great credit for their success. He is currently the president of Electro Switch Corp., which employs almost 300 people. He also serves as director of both the Bank of Braintree and the South Shore Hospital, and is also the past president and still an active member of the Weymouth Rotary Club.

I congratulate Frank Meissner for his many achievements and for his leadership in so many effective ways for the people of the South Shore. March 26 is truly Franklin N. Meissner Day on the south shore, and all of us are proud of him.

GREEK INDEPENDENCE DAY

Mr. KENNEDY. Mr. President, I am honored to be a sponsor of the resolution designating March 25, 1996 as Greek Independence Day.

On this, the 175th anniversary of Greek independence from the Ottoman Empire, we honor the courageous struggle by the Greeks to regain their freedom. After being ruled by the Ottoman Turks for four centuries, the people of Greece were able to restore democracy for the Nation where democracy was first born in the ancient world.

The people of Greece have made extraordinary contributions to all nations of the world, and no country has benefited more from these contributions than the United States. It has been said that except for the blind forces of nature, nothing moves in this world which is not Greek in origin. Our Founding Fathers modeled our own system of democratic government on the basic principles of democracy of ancient Greece, and over 3-million Greek-Americans today continue to make valuable contributions to all aspects of American life. This resolution, in commemorating Greek Independence Day, also commemorates the close and enduring ties between our two nations. Long may they flourish.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 1266. An act to provide for the exchange of lands within Admiralty Island National Monument, and for other purposes.

H.R. 1787. An act to amend the Federal Food, Drug, and Cosmetic Act to repeal the saccharin notice requirement.

The enrolled bills were signed subsequently by the President pro tempore [Mr. THURMOND].

At 2:59 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence Senate:

H.J. Res. 165. Joint resolution making further appropriations for the fiscal year 1996, 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-503. A joint resolution adopted by the Legislature of the State of Maine; to the Committee on Agriculture, Nutrition, and Forestry.

"JOINT RESOLUTION

"Whereas, the federal budget allocates less heating assistance for low-income homeowners than provided in previous years; and

"Whereas, food stamp assistance under certain circumstances is linked to heating assistance; and

"Whereas, the significant reduction in heating assistance to 54,000 households in Maine, 12,000 of which involve subsidized housing and 7,000 of this 12,000 involve elderly households, will have a severe impact on Maine people, especially those receiving food stamps; and

"Whereas, cuts to the Low-Income Home Energy Assistance Program are concurrent with cutbacks in the prescription drug program, increases in Medicare premiums and the loss of food stamps. These cuts will be especially hard felt by Maine seniors and the disabled community who rely on these programs in their day-to-day existence; now, therefore, be it

"*Resolved*, That we, your Memorialists, respectfully recommend and urge the Congress of the United States to change current federal policy to allow persons who meet the eligibility requirements for food stamps but who do not receive heating assistance under the Low-Income Home Energy Assistance Program to receive food stamps in the same amount as they would have received had they received heating assistance; and be it further

"*Resolved*, That we, your Memorialists, respectfully recommend and urge the Congress of the United States to restore heating assistance and weatherization funds that have been recently cut in order that states such as Maine, which ranks 33rd in the nation with respect to median household income, do not have to make the choice whether people starve or freeze; and be it further

"*Resolved*, That suitable copies of this Memorial, duly authenticated by the Secretary of State, be transmitted to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States and to each Member of the Maine Congressional Delegation."

POM-504. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Agriculture, Nutrition, and Forestry.

"HOUSE JOINT MEMORIAL 4017

"Whereas, nonnative noxious weeds pose a substantial and significant threat to the economic welfare of the citizens of the state of Washington in that noxious weeds are detrimental or destructive of crops, fruit, trees, shrubs, valuable plants, forage, other cultivation, and agricultural plants or produce; and

"Whereas, in recognition of the substantial threat to economic welfare, the state of Washington has mandated the control and eradication of nonnative noxious weeds on all privately held and state-held lands, which has up to this time been effectively managed by the state of Washington; and

"Whereas, nonnative noxious weeds continue to proliferate and burgeon on lands that are the property of the United States of America, or under the control of the United States; and

"Whereas, the failure of the federal government of the United States to control or eradicate nonnative noxious weeds poses a substantial and significant threat to the economic welfare of the citizens of the state of Washington in that these weeds are detrimental or destructive of crops, fruits, trees, shrubs, valuable plants, forage, other cultivation, and agricultural plants or produce; and

"Whereas, this nonfeasance and malfeasance of the federal government, committed by and through the principal instrumentality of the United States Forest Service, is in direct violation of federal law and regulation; namely, the Carlson-Foley Act and Federal Noxious Weed Act; and

"Whereas, the previously mentioned unrestrained propagation and exponential reproduction of nonnative noxious weeds is an exigent economic and agricultural peril; and

"Now, therefore, your Memorialists respectfully pray that Congress recognize the enormous threat to the economic and agricultural welfare of the state of Washington, caused by the failure of the federal government to control or eradicate the agricultural and economic menacing nonnative noxious weeds, within the borders of the state of Washington and upon property of the United States of America or property under control of the United States, and as much, immediately direct all federal instrumentalities and agencies managing or controlling this property to comply with all relevant laws and regulations regarding control or eradication of nonnative noxious weeds in the state of Washington; and 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."

POM-505. A resolution adopted by the Senate of the Legislature of the Commonwealth of Pennsylvania; to the Committee on Banking, Housing, and Urban Affairs.

"RESOLUTION

"Whereas, commencing on January 7, 1996, the Commonwealth suffered from the loss of lives and severe property and economic damages as a result of the Blizzard of 1996, which was followed by unreasonable thaws, torrential rains and resulting flooding; and

"Whereas, the President of the United States has declared this entire Commonwealth a major disaster area because of extensive flooding, making individuals and businesses eligible for disaster assistance for flood damages, but not for similar blizzard-related damages; and

"Whereas, the President of the United States has also declared that 17 of 58 counties in this Commonwealth affected by flooding are eligible for Federal public disaster assistance on account of the flooding; and

"Whereas, the cost of responding to the Blizzard of 1996 left many municipalities without sufficient resources to react to and recover from severe flooding which resulted when melting snow and ice combined with heavy rain across this Commonwealth; and

"Whereas, the Federal Government has yet to acknowledge that the Blizzard of 1996 and the resulting flooding were related events that combined to cause a single major disaster; and

"Whereas, failure to treat the blizzard and flooding as one major disaster will result in undue hardship; and

"Whereas, failure to include the 41 additional counties among those declared eligible for Federal public disaster assistance will result in the lack of sufficient funds to return many communities in this Commonwealth to an acceptable level of public health and safety; and

"Whereas, the threat of additional snow and rain continues to present serious risk to

the health, safety and welfare of the citizens of this Commonwealth; and

"Whereas, the Commonwealth and its citizens, businesses and municipalities are in need of immediate and comprehensive financial assistance to recover from the combined effects of snow, ice and flooding that resulted from the Blizzard of 1996; therefore, be it

"*Resolved*, That the Senate join with the Governor in respectfully petitioning the President of the United States to direct the Federal Emergency Management Agency to:

"(1) acknowledge that the Blizzard of 1996 and resulting flooding were related events that combined to cause a single major disaster;

"(2) declare 41 additional counties eligible to receive Federal public disaster assistance as a result of that disaster; and

"(3) expedite the process of providing and prioritizing disaster assistance; and be it further

"*Resolved*, That a copy of this resolution be delivered to the President of the United States and the Director of the Federal Emergency Management Agency for immediate action; and be it further

"*Resolved*, That copies of this resolution be transmitted to the presiding officers of each house of Congress and to each member of Congress from Pennsylvania."

POM-506. A joint resolution adopted by the Legislature of the State of California; to the Committee on Commerce, Science, and Transportation.

"ASSEMBLY JOINT RESOLUTION NO. 41

"Whereas, it is necessary for the United States to seize the opportunities presented by commercial space activity and, for the benefit of all Americans, regain the position of leadership in this highly competitive, multi-billion dollar international market; and

"Whereas, investment in commercial space activity will lead to the creation of jobs, the expansion of economic opportunity, and the continuance of American world-leadership; and

"Whereas, it is important to assess where America stands in a rapidly expanding world marketplace and the direction in which America needs to proceed in order to compete in that marketplace; and

"Whereas, the United States was once the world leader in the provision of commercial space launch services and has, over the past few years, ceded this leadership to the European Space Agency, which now controls over 60 percent of this booming industry; and

"Whereas, in the newly emerging low-earth orbit satellite market, the area where California has the best opportunity to lead, the Chinese have taken the inside track, assisted in part by the favorable trade policies of the present federal administration; and

"Whereas, California is uniquely well-placed to serve as one of the leading commercial spaceport locations in the nation; and

"Whereas, enactment of a national spaceport program will put the United States in a stronger position to compete in the commercial space activity industry because it will enable this nation to fill in the missing piece of the commercial space activity circle, launch facilities; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California hereby declares its support for the enactment of a national spaceport program; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-507. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

"HOUSE JOINT MEMORIAL 4014

"Whereas, Washington's economy depends heavily on international trade, shipbuilding, seafaring, and tourism; and

"Whereas, the United States merchant marine continues to play a vital role in meeting the economic, military defense, and international aid objectives of our nation; and

"Whereas, the cruise ship industry has grown on average 9.3 percent annually since 1980 and is expected to double by the year 2000; and

"Whereas, the cruise ship trade, which now features Alaska, could grow even faster if it also featured Washington state; and

"Whereas, the cruise ship industry could potentially provide an additional one hundred million dollars to the Washington state economy if a United States coastwise cruise ship trade were established, with United States vessels transporting passengers between Washington state and other states, such as Alaska; and

"Whereas, representatives from United States ports, labor organizations, government agencies, and the maritime industry have met to develop an agreement on the successful advancement of a United States coastwise cruise ship trade; and

"Whereas, the United States Congress has been considering legislation that provides financial incentives and operating provisions to effectively establish a United States coastwise cruise ship trade;

"Now, therefore, your memorialists respectfully pray that the United States Congress and President William J. Clinton establish a United States cruise ship industry, thereby developing a United States cruise ship registry, United States jobs, and a United States coastwise cruise ship trade, be it

"*Resolved*, That copies of this Memorial be immediately transmitted to the Honorable William J. 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."

POM-508. A resolution adopted by the Senate of the Legislature of the State of Washington; to the Committee on Commerce, Science, and Transportation.

"SENATE RESOLUTION 1996-8695

"Whereas, tourism is of vital economic and cultural importance to the states and provinces of the Pacific Northwest comprised of Washington, Alaska, Alberta, British Columbia, Idaho, Montana, and Oregon; and

"Whereas, the State and Provincial governments of the Pacific Northwest are members of the Pacific Northwest Economic Region, a nonprofit public-private partnership established to promote regional economic cooperation; and

"Whereas, the States and Provinces of the Pacific Northwest Region expend in excess of $50 million per year to promote the tourism industry and attract millions of tourists from throughout North America and the World; and

"Whereas, the tourism industry constitutes billions of dollars in economic activity for the States and Provinces of the Pacific Northwest Region; and

"Whereas, the States and Provinces of the Pacific Northwest Economic Region have undertaken numerous collaborative and innovative tourism initiatives that have been successful in promoting tourism in the region and have laid the ground work for ongoing cooperative tourism development efforts; and

"Whereas, current proposals before Congress to establish a National Tourism Board and a National Tourism Organization to develop a national travel and tourism strategy to promote tourism in the United States is of considerable importance to the States of the Pacific Northwest; and

"Whereas, participation on the National Tourism Board and the National Tourism Organization is of vital interest and importance to the States of the Pacific Northwest; now, therefore, be it

"*Resolved*, that the Senate of the state of Washington respectfully request that a public and a private sector representative of the Pacific Northwest Economic Region be appointed to the National Tourism Board and the National Tourism Organization respectively; and be it further

"*Resolved*, That copies of this resolution be immediately transmitted to the Honorable William J. 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."

POM-509. A joint resolution adopted by the Legislature of the State of California; to the Committee on Environment and Public Works.

"ASSEMBLY JOINT RESOLUTION NO. 39

"Whereas, the Clinton Administration has proposed to end the United States Army Corps of Engineers' involvement in flood control projects in this state; and

"Whereas, the flooding that arose from the March storms resulted in catastrophic damages to lives and property, including statewide agricultural losses of $363,700,000, following $97,000,000 in losses in January; and

"Whereas, the recent storms illustrate the need to maintain the proactive and cooperative efforts of the federal government and the state to anticipate flood control needs; and

"Whereas, the citizens of the state are calling upon the federal government to continue the 80-year presence of the United States Army Corps of Engineers in this state, and allow the corps to continue working successfully with state and local officials in preparing and implementing flood control projects and policies; and

"Whereas, the federal proposal to withdraw the United States Army Corps of Engineers from active involvement in state flood control efforts, thus ending the working relationship between the federal government and the state regarding flood control, should be reviewed critically; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California recognizes the importance of preserving the existing partnership between the United States Army Corps of Engineers and the state in pursuing flood control projects, and respectfully memorializes the President and Congress of the United States to review and reevaluate the federal proposal to end the involvement of the United States Army Corps of Engineers in flood control projects in the state; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-510. A joint resolution adopted by the Legislature of the State of Washington; to the Committee on Environment and Public Works.

"HOUSE JOINT MEMORIAL 4043

"Whereas, the proposed conference mark for Mitchell Act funds is three and one-half million dollars less than the previous fiscal year; and

"Whereas, this proposed cut to Mitchell Act funds is in addition to cuts to this fund source over the past several years; and

"Whereas, the Mitchell Act was created to mitigate for the loss of naturally spawning salmon due to the federal power system developed on the Columbia River; and

"Whereas, a reduction in Mitchell Act funds will significantly reduce the quantity of hatchery-produced salmon produced in the Columbia River; and

"Whereas, reduced Mitchell Act funding will make it significantly more difficult to enter into an equitable treaty with Canada under the United States/Canada Pacific Salmon Treaty and will result in increased levels of wild salmon being harvested by Canadian fishers; and

"Whereas, commercial fishing families already hard hit by the effects of adverse ocean conditions, endangered species act restrictions, and recent natural disasters will be dealt yet another blow if full Mitchell Act funding is not restored; and

"Whereas, local economies dependent on cash inflow from recreational fishing activity will also be severely impacted by the effects of reduced Mitchell Act funding; and

"Whereas, Federal funding for fish hatcheries on the Columbia River is of critical importance to the states of Washington, Oregon, and Idaho;

"Now, therefore, your Memorialists respectfully pray that full Mitchell Act funding of eighteen and one-half million dollars be restored, be it

"*Resolved*, That copies of this Memorial be immediately transmitted to the Honorable William J. 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."

POM-511. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

"ASSEMBLY JOINT RESOLUTION NO. 22

"Whereas, social security laws, with respect to the taxing of social security as income at the federal level, have not been changed since the additional law was passed in 1983; and

"Whereas, social security is still taxable if personal income is more than twenty-five thousand dollars ($25,000) if single, or thirty-two thousand dollars ($32,000) if married; and

"Whereas, during that period of time, inflation has increased more than 35 percent, with no change in the limits of taxable income; and

"Whereas, on top of the initial tier of social security taxes, a federal law that imposes an additional higher social security tax was recently enacted whereby, under specified conditions, in the case of a single person earning thirty-four thousand dollars ($34,000) and a married couple earning forty-four thousand dollars ($44,000), 85 percent of social security benefits are added to taxable income without an upward shift in the first tier threshold of taxable income; and

"Whereas, senior income increases at a very low percentage but the amount of social security that is taxed is increasing each year; and

"Whereas, the people who are affected by this inflation are the people who can least afford it; and

"Whereas, those income limits, which include both social security and any tax-free income, no longer represent a fair amount of earnings to warrant tax on social security; now, therefore, be it

"*Resolved by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the Congress and the President to enact appropriate legislation which would provide that the two tier taxation of social security benefits be eliminated by allowing a single person to earn thirty-four thousand dollars ($34,000) and a married couple to earn forty-four thousand dollars ($44,000) before any portion of their social security income is taxed, and that those income limits be indexed to inflation; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Chairpersons of the House and Senate Committees on Aging, and to each Senator and Representative from California in the Congress of the United States."

POM-512. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

"ASSEMBLY JOINT RESOLUTION NO. 19

"RESOLUTION CHAPTER 78

"Whereas, section 405 of Title 42 of the United States Code mandates that states collect the social security account numbers of parents when birth certificates are issued; and

"Whereas, due to their common use as individual identifiers by both the public and private sectors, social security account numbers are essential tools for enforcing child support obligations because many of the child support enforcement actions mandated by federal law cannot be successfully undertaken without the use of social security account numbers; and

"Whereas, California has made tremendous progress in collecting delinquent child support orders through use of the state's tax collection agency, the Franchise Tax Board, and by refusing to issue or renew licenses if an individual is delinquent in paying his or her child support; and

"Whereas, these are model child support enforcement programs that have been adopted in several other states; and

"Whereas, these programs will not continue to be successful without utilization of the obligor's social security account number; and

"Whereas, a further exception to federal law is needed for documents used to enforce child support orders, specifically, marriage certificates and family law court documents; and

"Whereas, in many cases, these documents represent the only real opportunity to obtain the social security account numbers of the petitioner and respondent; and

"Whereas, social security account numbers are not provided on the marriage certificate at the beginning of the marriage, nor on the dissolution court documents at the end of the marriage, or on documents relating to the establishment of paternity, and consequently, the gathering of this information is entirely dependent on voluntary cooperation of the petitioner and the respondent; and

"Whereas, as of December 31, 1994, there were 2,304,362 Title IV-D cases, of which 1,126,422 were cases in which either a parent of the assets of a parent had not yet been located; and

"Whereas, it is essential that federal law be amended to allow the inclusion of social security account numbers on applications for licenses and certificates of marriage and on family law court records, and that federal law be further clarified to permit the continued maintenance of social security account numbers on court and other public agency records where the numbers were collected prior to October 1, 1990, and to permit states to make the social security account numbers available to child support agencies for the exclusive purpose of child support enforcement in accordance with federal and state law: Now, therefore, be it

"*Resolved, by the Assembly and Senate of the State of California, jointly*, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to amend federal law (42 U.S.C.A. Sec. 405) to allow social security account numbers to be included on applications for licenses and certificates of marriage and on records related to petitions for dissolution of marriage, and to clarify that social security account numbers on court and other public agency records may be maintained if they were collected prior to October 1, 1990, and permit states to make the social security account numbers available to child support agencies for the exclusive purpose of child support enforcement in accordance with federal and state law; and be it further

"*Resolved*, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States."

POM-513. A joint resolution adopted by the Legislature of the State of California; to the Committee on Finance.

"ASSEMBLY JOINT RESOLUTION 24

"Whereas, the ancient civilization of Assyria, located in Bet-Nahirain (Mesopotamia) in what is now modern day Iraq, was renown for its art and culture; and

"Whereas, in the eighth century B.C. King Assurnasirpal II of Assyria built the palace at Nimrud which contained highly descriptive bas-relief sculptures; and

"Whereas, an Assyrian relief from the palace at Nimrud was recently purchased at auction for $11.9 million by an anonymous buyer; and

"Whereas, Assyrians who are in diaspora throughout the world today are united in their vehement objection to the illicit sale and trafficking of Assyrian ancient antiquities and artifacts; and

"Whereas, the illicit sale and trafficking of ancient antiquities and artifacts is not limited to Assyrian artifacts but involves the cultural treasures of historical civilizations throughout the world, from the ancient temples of Angkor Wat in Cambodia, to Native American villages in the United States; and

"Whereas, the United Nations Educational, Scientific and Cultural Organization

(UNESCO) is seeking to establish an international code of ethics for art dealers and cultural professionals to help combat the rise in illicit trafficking of cultural antiquities and artifacts throughout the world; and

"Whereas, the illicit sale and purchase of cultural and antiquities and artifacts by personal art collectors diminishes their educational and aesthetic value, denigrates the history, art, legacy, and culture of the ancient civilizations that created those antiquities and artifacts, displays a lack of sensitivity toward the descendants of those civilizations, and demonstrates disrespect for the cultural heritage of all of humankind; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to take measures to halt the illicit sale and trafficking of cultural antiquities, including Assyrian artifacts, and to support the efforts of UNESCO to combat this serious problem; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States."

POM-514. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Finance.

"SENATE RESOLUTION NO. 222

"Whereas, an excellent highway network is vitally important to Michigan's economic well-being. All of the components of the state's economy are closely tied to the quality of the roadways used in transporting goods, services, and people throughout Michigan; and

"Whereas, Michigan's ability to maintain our transportation infrastructure is seriously impaired by the current policies of the federal government with regard to the federal gas tax each individual and business pays with every gallon of gasoline purchased. This unfair system costs the state hundreds of millions of dollars each year. The result is an increasing problem with the conditions of our roads and bridges; and

"Whereas, the largest element of the overall gas tax is the federal gas tax, which represents 18.4 cents of each dollar of gasoline sold. Of all of the states required to forward taxes to the federal government each year, Michigan ranks among the lowest in the ratio of gas tax revenues being returned to the citizens who paid the tax. In 1993, for example, $733.7 million was paid to the Federal Highway Trust Fund, and only $520.1 million was returned, a loss of $213.6 million, a loss that sets Michigan at a distinct disadvantage when making road improvements. Considering the inequitable manner in which this money is reallocated to the states of the union, it is clear that Michigan is bearing an oppressive burden through this taxation, a development of the tax structure that must be changed; and

"Whereas, adding to Michigan's tremendous burden, during the years 1990–1995, our state contributed $1.168 billion to federal deficit reduction, dollars that were initially collected to improve transportation routes in Michigan. This amount comprises approximately 20 percent of the total amount levied on Michigan citizens for the years 1990–1995. In addition, by 1999 Michigan's total contributions to deficit reduction are expected to total $2.099 billion, an amount that would certainly enable us to better maintain our roads and highways; and

"Whereas, clearly, Michigan is at a great disadvantage with states that receive far higher returns on their gas tax dollars marked for road improvements. In effect, we are subsidizing transportation maintenance and projects elsewhere when improvements are so desperately needed in our own state; and

"Whereas, with the new approaches to budgetary matters in Washington and a renewed willingness to examine the true costs of all spending policies, the time is right to remedy this unjust situation; now, therefore, be it

"*Resolved by the Senate*, That we urgently and respectfully request the Congress of the United States to return to Michigan all of the revenue from the federal gas tax collected in Michigan; and be it further

"*Resolved*, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Michigan congressional delegation with the request that each member review this issue and offer a formal response to this body, the Michigan State Senate."

POM-515. A resolution adopted by the Senate of the Legislature of the State of Michigan; to the Committee on Finance.

"SENATE RESOLUTION NO. 223

"Whereas, the quality of Michigan roadways has a great deal to do with the state's competitiveness in attracting and retaining jobs for our citizens. Every individual and every business in Michigan is affected when Michigan roads suffer from insufficient maintenance. Finding the means to meet this financial challenge is of the utmost importance to both state and local policymakers as we prepare for the twenty-first century; and

"Whereas, the difficult task of providing excellence in transportation in Michigan is made far worse by some of the current practices of the federal government with regard to the allocation of money raised by the federal gas tax; and

"Whereas, the current practices of the federal government with regards to the allocation of dollars raised by the federal tax make it difficult for Michigan to improve and expand its transportation system. Of the states required to send money to the federal government, in accordance with the federal funding formula, Michigan sends significantly more money to Washington than it receives back. In 1993, for example, Michigan paid a total of $733.7 million to the Federal Highway Trust Fund, and only $520.1 million was returned; and

"Whereas, in addition, even more money designated for return to Michigan, and several other states, is being withheld by federal transportation authorities. This money is critical to our transportation infrastructure and a vital component of the state's economic well-being.

"Whereas, the current budget debate offers an opportunity to reexamine this critical aspect of public spending. This examination should include immediately correcting the gross inequities in allocating the funds generated by the federal gas tax; now, therefore, be it

"*Resolved by the Senate*, That we respectfully, but urgently, ask the Congress of the United States to release to the states, including Michigan, any federal road funding due under the gas tax formula but currently being held back by the federal government; and be it further

"*Resolved*, That copies of this resolution be transmitted to the President of the United States Senate, the Speaker of the United States House of Representatives, and to each member of the Michigan congressional delegation with the request that each member review this issue, offering a formal response to this body, the Michigan State Senate."

POM-516. A resolution adopted by the Senate of the Legislature of the State of Washington; to the Committee on Finance.

"SENATE RESOLUTION 1996-8696

"Whereas, the Pacific Northwest Region comprising of Washington, Alaska, British Columbia, Alberta, Montana, Idaho, and Oregon contains numerous border crossings between the United States and Canada; and

"Whereas, cultural, social, and economic exchanges between the citizens, organizations, and businesses of the region have historically been and continue to be an integral part of the regions economic and cultural development; and

"Whereas, the historically close and constant ties between the two countries of Canada and the United States have been forged and maintained by continuous cultural exchanges ranging from fraternities, social, sports, and business clubs to name but a few; and

"Whereas, the rapid changes in global affairs require countries to renew and enhance their ties with neighboring states and countries; and

"Whereas, millions of individuals cross the borders of the Pacific Northwest per annum including numerous tourists expending billions of dollars in the United States and Canada; and

"Whereas, a border crossing fee as proposed by current federal legislation would adversely impact both the economy, culture, and quality of life for many of the regions' citizens; now, therefore, be it

"*Resolved*, That the Senate of the state of Washington opposes any proposal that would levy a fee on any individuals crossing the borders of the United States; and be it further

"*Resolved*, That copies of this resolution be immediately transmitted to the Honorable William J. 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, Oregon, Montana, and Idaho, and the Secretary of the United States Customs and Immigration Department."

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. LAUTENBERG:

S. 1632. A bill to prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes; to the Committee on the Judiciary.

S. 1633. A bill to provide for school bus safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. LEVIN (for himself, Mr. DOLE, Mr. DASCHLE, Mr. INOUYE, and Mr. D'AMATO):

S. 1634. A bill to amend the resolution establishing the Franklin Delano Roosevelt Memorial Commission to extend the service of certain members; to the Committee on Rules and Administration.

By Mr. DOLE (for himself, Mr. THURMOND, Mr. STEVENS, Mr. HELMS, Mr. COCHRAN, Mr. WARNER, Mr. LOTT, Mr. KYL, Mr. SMITH, Mr. INHOFE, Mr. NICKLES, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COATS, Mr. COHEN, Mr. SANTORUM, Mr. MACK, and Mr. DOMENICI).

S. 1635. A bill to establish a United States policy for the deployment of a national missile defense system, and for other purposes; to the Committee on Armed Services.

By Mr. WYDEN:

S. 1636. A bill to designate the United States Courthouse under construction at 1030 Southwest 3rd Avenue, Portland, Oregon, as the "Mark O. Hatfield United States Courthouse," and for other purposes; to the Committee on Environment and Public Works.

By Mr. HARKIN:

S. 1637. A bill to amend the Internal Revenue Code of 1986 to revise the tax rules on expatriation, and for other purposes; to the Committee on Finance.

By Mr. PRESSLER (for himself, Mr. GLENN, Mr. D'AMATO, Mr. KERREY, Mr. BENNETT, and Mrs. FEINSTEIN):

S. 1638. A bill to promote peace and security in South Asia; to the Committee on Foreign Relations.

By Mr. DOLE (for himself, Mr. THURMOND, Mr. WARNER, and Mr. GRAMM):

S. 1639. A bill to require the Secretary of Defense and the Secretary of Health and Human Services to carry out a demonstration project to provide the Department of Defense with reimbursement from the Medicare program for health care services provided to Medicare-eligible beneficiaries under TRICARE; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG:

S. 1632. A bill to prohibit persons convicted of a crime involving domestic violence from owning or possessing firearms, and for other purposes; to the Committee on the Judiciary.

FIREARMS LEGISLATION

• Mr. LAUTENBERG. Mr. President, today I am introducing legislation that would prohibit individuals who have been convicted of a crime involving domestic violence from owning or possessing firearms.

Under current Federal law, Mr. President, it is illegal for people convicted of felonies to possess firearms. Yet many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies. At the end of the day, maybe following a plea bargain, they are convicted of misdemeanors. And these people are still free under Federal law to possess firearms.

This legislation will close this loophole, and will help keep guns out of the hands of people who have proven themselves to be violent and a threat to those closest to them. The legislation would add to the list of persons disqualified from owning or possessing a firearm individuals who have been convicted of any crime involving domestic violence, regardless of the length, term, or manner of punishment. This includes violent crimes committed by a spouse, former spouse, paramour, parent, guardian or similar individual.

Mr. President, although there is a growing awareness about the problem of domestic violence, in many places, even today, these outrageous acts are not taken as seriously as other forms of brutal behavior. Yet each year an estimated 2 million women are victimized by domestic violence. That is 10 times the number of women who are diagnosed with breast cancer. Of those 2 million women, nearly 6,000 die at the hands of men who at least at one time claimed to love them. About 70 percent of the time, those hands are holding a gun.

Mr. President, much of the killing and maiming associated with domestic violence could not happen but for the presence of a firearm. The New England Journal of Medicine reports that in households with a history of battering, a gun in the home increases the likelihood that a woman will be murdered fivefold. Often, the only difference between a battered woman and a dead woman is the presence of a gun.

Acts of domestic violence, by their nature, are especially dangerous and require special attention. These crimes involve people who have a history together, and who perhaps share a home or a child. These are not violent acts between strangers, and they do not arise from a chance meeting. Even after a split, the individuals involved often by necessity have a continuing relationship of some sort. The husbands, boyfriends, and former husbands who commit these crimes often have a record of violent and threatening behavior. And yet, frequently, these men are being permitted to possess firearms—with no legal restrictions.

The statistics and data are clear. Domestic violence, no matter how it is labeled, leads to more domestic violence. And guns in the hand of convicted spouse abusers lead to death.

To me, Mr. President, it is a simple proposition. Those guilty of acts of domestic violence should not be trusted to acquire or possess a gun. Period.

Mr. President, this legislation would save the lives of many innocent Americans. But it also would send a message about our Nation's commitment to ending domestic violence, and about our determination to protect the millions of women and children who suffer from this abuse.

I hope my colleagues will support the bill, and ask unanimous consent that a copy of the legislation be printed in the RECORD.

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

S. 1632

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

SECTION 1. DEFINITIONS.

Section 921(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(33) The term 'crime involving domestic violence' means a felony or misdemeanor crime of violence, regardless of length, term, or manner of punishment, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim under the domestic or family violence laws of the jurisdiction in which such felony or misdemeanor was committed.".

SEC. 2. UNLAWFUL ACTS.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by striking "or" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) is under indictment for, or has been convicted in any court of, any crime involving domestic violence."; and

(2) in subsection (g)—

(A) by striking "or" at the end of paragraph (7);

(B) in paragraph (8), by striking the comma and inserting "; or"; and

(C) by inserting after paragraph (8) the following new paragraph:

"(9) who is under indictment for, or has been convicted in any court, or any crime involving domestic violence,".

SEC. 3. RULES AND REGULATIONS.

Section 926(a) of title 18, United States Code, is amended—

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

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

(3) by inserting after paragraph (3) the following new paragraph:

"(4) regulations providing for the effective receipt and secure storage of firearms relinquished by or seized from persons described in subsection (d)(9) or (g)(9) of section 922.".

SEC. 4. RESTORATION OF CIVIL RIGHTS AFTER CONVICTION.

Section 921(a)(20) of title 18, United States Code, is amended by striking the period at the end and inserting the following: "; or such restoration of civil rights occurs following conviction of a crime of domestic violence (as defined in section 921(a)(33)). A conviction of a crime of domestic violence shall not be considered to be a conviction for purposes of this chapter if the conviction is reversed or set aside based on a determination that the conviction is invalid, or if the person has been pardoned, unless the authority that grants the pardon expressly states that the person may not ship, transport, possess, or receive firearms.".

SEC. 5. ADMINISTRATIVE RELIEF FROM CERTAIN FIREARM PROHIBITIONS.

(a) IN GENERAL.—Section 925(c) of title 18, United States Code, is amended—

(1) in the first undesignated sentence, by inserting "(other than a person convicted of a crime of domestic violence as defined in section 921(a)(33))" before "who is prohibited"; and

(2) in the fourth undesignated sentence—

(A) by inserting "person (other than a person convicted of a crime of domestic violence as defined in section 921(a)(33)) who is a" before "licensed importer"; and

(B) by striking "his" and inserting "the person's".

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply to—

(1) application for administrative relief and actions for judicial review that are pending on the date of enactment of this Act; and

(2) applications for administrative relief filed, and actions for judicial review brought, after the date of enactment of this Act.•

By Mr. LAUTENBERG:

S. 1633. A bill to provide for schoolbus safety, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE OMNIBUS SCHOOL TRANSPORTATION SAFETY ACT OF 1996

•Mr. LAUTENBERG. Mr. President, today I am introducing legislation, the Omnibus School Transportation Safety Act of 1996, that would improve the safety of schoolbus travel.

The legislation would require background checks of schoolbus drivers, establish minimum proficiency standards for such drivers, and promote advanced technologies that can help prevent schoolbus accidents. In addition, the bill calls for a variety of studies that could improve schoolbus safety and increase the information on bus safety available to school districts and parents.

Mr. President, America's schoolchildren have a right to safe transportation to and from school. And we have a responsibility to do everything we can to guarantee that safety.

To ensure our children's safety, we first must ensure that bus drivers are decent individuals who will not harm their passengers. Unfortunately, sexual deviants often are attracted to driving a schoolbus because the job gives them easy access to children who are the focus of their sexual desires.

Children who ride on schoolbuses, particularly those in elementary school, are extremely vulnerable to physical abuse. They are too young to comprehend what is being done to them and too small to physically defend themselves from an attack. As a nation, we have a responsibility to provide as much protection as possible to this vulnerable population. My bill therefore would require all States to perform a Federal background check on potential schoolbus drivers before they are allowed to be alone with our children.

Eighteen States—Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Michigan, Mississippi, New Jersey, New York, Ohio, Oregon, Pennsylvania, Utah, Virginia, Washington, and Louisiana—already conduct State and Federal background checks on their drivers. My amendment generally would not affect how these States administer their programs.

Fourteen States—Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, North Carolina, Rhode Island, Texas, West Virginia, Nebraska, Illinois, and Wisconsin—currently perform only State background checks. This is well-meaning, but insufficient. A convicted sexual deviant can easily move to one of these States, receive a clean background check, and begin driving his prey to and from school. My bill therefore would require those States to participate in the nationwide, Federal program.

There also are 18 States—Alabama, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Montana, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Vermont, and Wyoming—that have no background checks for their schoolbus drivers. There is no rational reason why these States should not do more to protect their citizens.

Mr. President, during the 2 months after California instituted Federal criminal background checks in 1990, it screened out 150 convicted sex offenders, child molesters, and violent criminals who tried to get permits to drive schoolbuses. This is shocking and my bill would address this problem.

Beyond requiring background checks for prospective schoolbus drivers, Mr. President, my bill includes a variety of provisions designed to reduce schoolbus accidents.

During the past 10 years, 300 school-age pedestrians under 19 years of age have died in schoolbus-related crashes. Two-thirds were killed by their own schoolbus. Half of all school-age pedestrians killed by schoolbuses in the past 10 years were 5- and 6-year-olds. On average, 21 school-age pedestrians are killed by schoolbuses each year, and 9 are killed by other vehicles involved in schoolbus-related crashes.

Mr. President, as a nation, we need to do much more to prevent schoolbus accidents. This bill attacks the problem on a number of fronts.

First, it would establish proficiency standards for schoolbus drivers.

Mr. President, driving a schoolbus with 40 young, screaming children is a unique skill that deserves specialized training. Unfortunately, many drivers are distracted when their young passengers are noisy or otherwise disruptive, and the results can be tragic. Inattention is one of the two factors most often reported by police for schoolbus drivers striking school-age pedestrians.

Bus drivers already are required to possess a commercial driver's license with a general endorsement for those driving vehicles with more than 15 passengers. However, there are no Federal standards specifically directed to schoolbus drivers. My bill would require the Secretary of Transportation to prescribe such standards.

Mr. President, some States already prescribe a level of proficiency for schoolbus drivers, but many do not. My bill generally would not interfere with existing State programs, but it would ensure that all schoolbus drivers meet a minimum standard of proficiency.

Another way that my bill would reduce schoolbus accidents is by assisting States to develop safer places for children to enter and leave their bus. For example, States could make bus stops more safe by increasing their visibility. Similarly, States could establish special safe areas in which children could disembark from busses, away from traffic.

The legislation also would require the Secretary of Transportation to promote the use and reduce the cost of hazard warning systems or sensors that alert schoolbus drivers of pedestrians or vehicles in, or approaching, the path of the schoolbus. These types of warning systems can be critical in saving the lives of young people. Unfortunately, many school districts have failed to invest in such systems. One reason is that their cost can be high. We need to explore ways to reduce those costs.

Another provision in the bill would require the Secretary to improve training materials on schoolbus safety and to improve the distribution and availability of such materials to schools for use by the student safety patrols. The most effective way to protect schoolchildren is to teach them to protect themselves. The Department of Transportation can do more in this area.

My legislation also would promote research into the possibility of installing safety belts in schoolbuses.

Mr. President, in addition to the loss of life attributed to schoolbus accidents that I mentioned earlier, approximately 10,000 schoolbus passengers are injured every year. Most injuries occur during side and rollover collisions. In this type of collision, the compartmentalized seat does not protect children, who can fall up to 8 feet to strike the roof, windows, other seats, and other children.

To reduce these types of injuries, the State of New Jersey requires the installation and use of safety belts in all schoolbuses. New Jersey's State law in this area was adopted after a study by the New Jersey Office of Highway Traffic Safety into the safety of lap seatbelts in large school vehicles. That study concluded that installation of seatbelts in all schoolbuses would improve vehicles' overall safety performance. The study recommended that schoolbuses be required to be equipped with seatbelts, which led to later enactment of the New Jersey law.

Mr. President, I support this law and believe it should be adopted on a Nation-wide basis. It is nearly impossible for a bus without belts to rollover without causing injuries or death.

However, I recognize that some in Washington believe more information is needed before establishing such a Federal requirement.

One cause of this skepticism is that the Federal Government does not study crashes in which there are no injuries. The National Transportation Safety Board only investigates bus crashes where there are severe injuries or fatalities. Therefore, the data they collect do not accurately reflect the benefits of safety belts in schoolbuses.

A bus with safety belts costs an average of $1,000 more than a bus without belts. With an estimated schoolbus life of 15 years, seatbelt installation would cost approximately $66 per bus per year.

Children are already required to wear seatbelts in cars. Installation of seatbelts on the standard size schoolbuses would reinforce the importance of wearing seatbelts, reduce injuries to our children, cost relatively little to install and maintain, and overall, makes schoolbus transportation safer for our children.

My bill would require the National Highway Traffic Safety Administration [NHTSA] to study the safety impact of safety belts on schoolbuses. It specifically requires that NHTSA evaluate the real life consequences of New Jersey's safety belt law. I am hopeful that the resulting study will help end the longstanding debate on this issue, so we can move forward to protect the lives of our Nation's children.

Mr. President, this legislation also requires the Secretary of Transportation to begin a rulemaking process to determine the feasibility and practicability of: First, decreasing the flammability of materials used in the construction of the interiors of schoolbuses; second, informing purchasers of schoolbuses on the secondary market that those buses may not meet current NHTSA standards; and third, establishing construction and design standards for wheelchairs used in the transportation of students in schoolbuses.

The bill also requires the Secretary to conduct a variety of studies designed to provide an accurate data base of schoolbus safety information. In addition, the bill, in response to requests from some States, calls for Federal guidelines on the securing in a schoolbus of children under the age of five, and on measures to facilitate their evacuation in an emergency.

Mr. President, the Omnibus School Transportation Safety Act of 1996 is comprehensive legislation that would dramatically reduce deaths and injuries of children associated with schoolbus accidents.

I hope my colleagues will support the bill, and ask unanimous consent that the text of the legislation, along with a section-by-section analysis of the bill, be included in the RECORD.

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

S. 1633

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

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the "Omnibus School Transportation Safety Act of 1996".

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

(1) In the United States, school buses travel more than 4,000,000,000 miles each year to transport approximately 25,000,000 children to and from school and various school-related activities.

(2) School buses are specifically designed to carry children safely to and from school, and generally are operated by educational agencies that receive Federal assistance for educational activities.

(3) On the average, each year in the United States—

(A) 17 occupants are killed while riding school buses, of which—

(i) 10 pupils are killed while riding type I school buses with a gross weight rating of greater than 10,000 pounds, and those school buses are predominantly used in the United States;

(ii) 2 pupils are killed while riding other vehicles used as school buses; and

(iii) 5 drivers are killed while driving school buses;

(B) 38 children are killed in loading zones surrounding school buses;

(C) 480 children are seriously injured while riding school buses; and

(D) 160 children are seriously injured while boarding or leaving school buses.

(4) Although most crashes involving school buses are minor, some examples of serious crashes that have had tragic consequences, include—

(A) the school bus crash that occurred in Alton, Texas;

(B) the school bus crash that occurred in October of 1995, in Fox River Grove, Illinois; and

(C) the recent school bus crash outside of Green Bay, Wisconsin, that killed the driver.

(5) Each year approximately 35,000 school buses are manufactured in the United States. The components for those buses are produced in various locations throughout the United States. The few companies that manufacture those buses ship the buses throughout the United States and to foreign countries.

(6) Numerous Federal laws, including subtitle VI of title 49, United States Code, regulate school buses as commercial motor vehicles. Subtitle VI of title 49, United States Code, provides for—

(A) motor vehicle safety standards under chapter 311 of that subtitle; and

(B) the regulation of commercial motor vehicle operators under chapter 313 of that subtitle.

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) BUS.—The term "bus" means a motor vehicle with motive power, except a trailer, designed for carrying more than 10 persons.

(2) LOCAL EDUCATIONAL AGENCY.—The term "local educational agency" means a local educational agency (as that term is defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)) that receives Federal funds.

(3) NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.—The term "national criminal history background check system" has the meaning given that term in section 5(6) of the National Child Protection Act of 1993 (42 U.S.C. 5119c(6)).

(4) NEWLY EMPLOYED.—With respect to the employment of a school bus driver by an employer, the term "newly employed" applies to the initial employment of an individual who has not been similarly employed by that employer.

(5) POSTSECONDARY INSTITUTION.—The term "postsecondary institution" means an institution of higher education, as that term is defined in section 481(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1088(a)(1)).

(6) PRIVATE SCHOOL.—The term "private school" includes any private postsecondary institution.

(7) SCHOOL BUS.—The term "school bus"—

(A) means a bus that is used for purposes that include carrying pupils to and from a public or private school or school-related events on a regular basis; and

(B) does not include a transit bus or a school-chartered bus.

(8) SCHOOL-CHARTERED BUS.—The term "school-chartered bus" means a bus that is operated under a short-term contract with State, local, or private school authorities, which have acquired exclusive use of the bus at a fixed charge in order to provide transportation for a group of pupils to a special school-related event.

(9) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(10) STATE.—The term "State" means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

SEC. 3. PROFICIENCY STANDARDS FOR SCHOOL BUS DRIVERS.

(a) PROFICIENCY STANDARDS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall issue regulations establishing proficiency standards for school bus drivers (including drivers of school-chartered buses) who are required under applicable State law to possess a commercial driver's license to operate a school bus.

(b) EXEMPTION FOR CERTAIN STATES.—The regulations issued under subsection (a) shall provide that a State may use State proficiency standards, in lieu of the standards established by such regulations, if—

(1) the State proficiency standards are established before the date on which the proficiency standards under such regulations are established; and

(2) the Secretary determines that such State proficiency standards are as rigorous as the proficiency standards under such regulations.

(c) DEMONSTRATION OF PROFICIENCY.—Upon the establishment of the proficiency standards under subsection (a), each school bus driver referred to in such subsection shall demonstrate (at such intervals as the Secretary shall prescribe) to the employer of the driver, the local educational agency, the State licensing agency, or other person or agency responsible for regulating school bus drivers, the proficiency of that driver in operating a school bus in accordance, as the case may be, with the proficiency standards—

(1) established by the regulations issued under subsection (a); or

(2) established by the State concerned and determined by the Secretary to be as rigorous as the proficiency standards established by the regulations issued under subsection (a).

SEC. 4. CRIMINAL BACKGROUND CHECKS OF SCHOOL BUS DRIVERS.

(a) PROHIBITION ON EMPLOYMENT PENDING CHECK.—Notwithstanding any other provision of law, no local educational agency, private school, or contractor providing school transportation services to a local educational agency or private school, may newly employ an individual as a driver of a school bus of, or on behalf of, the agency or private school before the completion of a background check of that individual through the national criminal history background check system to determine whether the individual has been convicted of a crime which would warrant barring the person from duties as a driver of a school bus.

(b) BACKGROUND CHECK PROCEDURES.—

(1) IN GENERAL.—Each State shall establish procedures for conducting a background check under this section.

(2) REQUIREMENTS FOR PROCEDURES.—The procedures established under this subsection shall include the designation of an agency of the State to—

(A) carry out the background checks; and

(B) meet the guidelines set forth in section 3(b) of the National Child Protection Act of 1993 (42 U.S.C. 5119a(b)).

(c) LIMITATION ON LIABILITY.—A local educational agency, private school, or a contractor providing school transportation services to a local educational agency or private school shall not be liable in an action for damages on the basis of a criminal conviction of a person employed by that agency or contractor as a school bus driver if—

(1) a background check of the person was conducted under this section; and

(2) the conviction was not disclosed to the local agency, private school, or contractor providing such transportation services pursuant to the background check.

(d) FEES.—

(1) IN GENERAL.—The Director of the Federal Bureau of Investigation may impose and collect a fee for providing assistance in the conduct of a background check under this section. The amount of such fee may not exceed the actual cost to the Federal Bureau of Investigation for providing such assistance.

(2) MONITORING.—The Attorney General of the United States shall monitor the collection of fees under this subsection for purposes of ensuring that—

(A) the fees are collected on a uniform basis; and

(B) the amounts collected reflect only the actual cost to the Federal Bureau of Investigation of providing assistance in the conduct of background checks under this section.

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall apply to an individual newly employed by a local educational agency, private school, or contractor providing school transportation services to a local educational agency or private school beginning on the later of—

(A) the date that is 60 days after the date of enactment of this Act; or

(B) the date on which the State agency in which the local educational agency, private school, or contractor providing such transportation services is located establishes the procedures required under subsection (c).

(2) BACKGROUND CHECKS CONDUCTED BY THE FBI.—

(A) IN GENERAL.—To the maximum extent practicable, during the period specified in subparagraph (B), a local educational agency, private school, or contractor providing school transportation services shall request that the Federal Bureau of Investigation conduct a background check with fingerprints of each individual newly employed by the local educational agency, private school, or contractor as a school bus driver of the local educational agency, private school, or contractor.

(B) PERIOD OF APPLICABILITY.—Subparagraph (A) shall apply to a local educational agency, private school, or contractor providing school transportation services during the period beginning on the date of enactment of this Act and ending on the date of applicability of this section, as determined under paragraph (1).

(f) FUNDING.—

(1) VIOLENCE PREVENTION PROGRAMS.—Section 4116(b)(5) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7116(b)(5)) is amended by striking "and neighborhood patrols" and inserting "neighborhood patrols, and criminal background checks of potential drivers of school buses under section 4 of the Omnibus School Transportation Safety Act of 1996".

(2) INNOVATIVE EDUCATION ASSISTANCE.—Section 6301(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7351(b)) is amended—

(A) by striking "and" at the end of paragraph (7);

(B) by striking the period at the end of paragraph (8) and inserting "; and"; and

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

"(9) the carrying out of criminal background checks of potential drivers of school buses under section 4 of the Omnibus School Transportation Safety Act of 1996.".

SEC. 5. DEVELOPMENT OF INTELLIGENT VEHICLE-HIGHWAY SYSTEMS FOR SCHOOL BUS SAFETY.

Section 6055(d) of the Intelligent Vehicle-Highway Systems Act of 1991 (23 U.S.C. 307 note) is amended—

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

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

(3) by adding at the end the following new paragraph:

"(4) ensure that 1 or more operational tests advance the use and reduce the cost of intelligent vehicle-highway system technologies (including hazard warning systems or sensors) that alert school bus drivers of pedestrians or vehicles in, or approaching, the path of the school bus.".

SEC. 6. STUDY OF OCCUPANT RESTRAINTS IN SCHOOL BUSES.

(a) STUDY.—The National Transportation Safety Board organized under chapter 11 of title 49, United States Code, shall conduct a study on the safety consequences of the requirement of the State of New Jersey for lap belts in school buses.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Chairman of the National Transportation Safety Board shall submit to the Congress a report containing the findings of the study conducted under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Transportation Safety Board to carry out this section $100,000, which shall remain available until expended.

SEC. 7. TRAFFIC ENGINEERING ACTIVITIES TO IMPROVE SCHOOL BUS SAFETY.

Notwithstanding any other provision of law, the Secretary shall ensure that each State receiving aid to conduct highway safety programs under section 402(c) of title 23, United States Code, may utilize a portion of such aid for the purpose of conducting traffic engineering activities in order to improve the safe operation of school buses.

SEC. 8. DETERMINATION OF PRACTICABILITY AND FEASIBILITY OF CERTAIN SAFETY AND ACCESS REQUIREMENTS FOR SCHOOL BUSES.

(a) COMMENCEMENT OF RULEMAKING PROCESS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall commence or continue to carry out a rulemaking process to determine the feasibility and practicability of—

(1) a requirement for a decrease in the flammability of the materials used in the construction of the interiors of school buses;

(2) a requirement that individuals, local educational agencies, or companies that sell in the secondary market school buses that may be used in interstate commerce inform purchasers of those buses that those buses may not meet applicable National Highway Transportation Safety Administration standards or Federal Highway Administration standards; and

(3) the establishment of construction and design standards for wheelchairs used in the transportation of pupils in school buses.

(b) FINAL RULE.—Not later than 30 months after the date of enactment of this Act, the Secretary shall issue a final regulation providing for any requirement or standard referred to in paragraph (1), (2), or (3) of subsection (a) that the Secretary determines to be feasible and practicable.

(c) REPORT TO CONGRESS.—If the Secretary makes a determination that a requirement or standard referred to in paragraph (1), (2), or (3) is not feasible or practicable, not later than the date specified in subsection (b), the Secretary shall prepare and submit to the Congress a report that provides the reasons for that determination.

SEC. 9. GUIDELINES FOR SAFE TRANSPORTATION OF CHILDREN BY SCHOOL BUS.

The Administrator of the National Highway Traffic Safety Administration shall develop and disseminate guidelines for ensuring the safe transportation in school buses of children under the age of 5. Those guidelines shall include recommendations for the evacuation of such children from such buses in the event of an emergency.

SEC. 10. DISSEMINATION OF INFORMATION ON SCHOOL BUS SAFETY.

(a) DISSEMINATION OF INFORMATION.—In carrying out research on highway safety under section 403 of title 23, United States Code, in consultation with the appropriate officials or representatives of the American Automobile Association, State educational agencies, and highway safety organizations, the Secretary shall provide for the improvement of—

(1) training materials on school bus safety; and

(2) the distribution and availability of such materials to public and private schools for use by the student safety patrols of those schools and to appropriate law enforcement agencies.

(b) FUNDING.—Notwithstanding any other provision of law, of the funds made available to the Secretary for research on highway safety and traffic conditions under section 403 of title 23, United States Code, for each of fiscal years 1996 through 2001, $100,000 shall be available for each of those fiscal years for the purposes of carrying out this section.

SEC. 11. STUDY AND REPORT ON SCHOOL BUS SAFETY.

(a) STUDY.—

(1) IN GENERAL.—The Secretary shall carry out a study to determine—

(A) the extent to which public transit vehicles (as defined by the Secretary) are engaged in school bus operations;

(B) the point at which a public transit vehicle is sufficiently engaged in such operations as to be considered a school bus for purposes of regulation under Federal law; and

(C) the differences between school bus operations carried out directly by schools or local educational agencies and school bus operations carried out by schools or local educational agencies by contract or tripper service (as defined by the Secretary).

(2) AREAS.—The study conducted under this subsection shall address the differences between the services and operations referred to in paragraph (1)(C) in terms of—

(A) crash injury data;

(B) driver and carrier requirements;

(C) passenger transportation requirements;

(D) routes and operational requirements that affect safety;

(E) vehicle attributes that affect safety;

(F) bus construction and design standards;

(G) Federal and State operating assistance (per passenger, per mile, per hour);

(H) total operating costs;

(I) Federal and State capital assistance (per passenger, per mile, per hour);

(J) total capital costs; and

(K) any other factor that the Secretary considers appropriate.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to the committees described in paragraph (2) a report on the results of the study carried out under subsection (a).

(2) COMMITTEES.—The committees referred to in paragraph (1) are—

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Commerce, Science, and Transportation of the Senate;

(C) the Committee on Appropriations of the Senate;

(D) the Committee on Transportation and Infrastructure of the House of Representatives;

(E) the Committee on Commerce of the House of Representatives; and

(F) the Committee on Appropriations of the House of Representatives.

SEC. 12. IMPROVED INTERSTATE SCHOOL BUS SAFETY.

(a) APPLICABILITY OF FEDERAL MOTOR CARRIER SAFETY REGULATIONS TO INTERSTATE SCHOOL BUS OPERATIONS.—Section 31136 of title 49, United States Code, is amended—

(1) by striking the second sentence of subsection (e); and

(2) by adding at the end the following new subsection:

"(g) APPLICABILITY TO SCHOOL TRANSPORTATION OPERATIONS OF LOCAL EDUCATIONAL AGENCIES.—Not later than 18 months after the date of enactment of this subsection, the Secretary shall issue regulations making the relevant commercial motor carrier safety regulations issued under subsection (a) applicable to all interstate school transportation operations by local educational agencies (as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)).".

(b) EDUCATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Secretary shall develop and implement an education program informing all local educational agencies that those agencies are required to comply with the Federal commercial motor vehicle safety regulations issued under section 31136 of title 49, United States Code, when providing interstate transportation on a school bus vehicle to and from school-sanctioned and school-related activities.

SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

OMNIBUS SCHOOL TRANSPORTATION SAFETY ACT OF 1996—SECTION BY SECTION

Sec. 1: Short Title; Findings.

Sec. 2: Definitions.

Sec. 3: Directs the Secretary to prescribe proficiency standards for school bus drivers.

At present, school bus drivers are required to have a Commercial Drivers License (CDL). However, CDL training for bus drivers is geared primarily towards commercial motor carrier drivers. "Inattention" and "failure to yield" were the factors most often reported by police for school bus drivers striking a school-age pedestrian. A school bus driver faces unique driving and pupil control situations that current CDL training does not address. This section will require school bus drivers to be trained to handle these unique situations before they are allowed on the road.

Sec. 4: Requires states to conduct federal background checks with fingerprints of prospective school bus drivers.

School bus drivers are alone and off of school property with students for extended periods of time. At present, 18 States conduct Federal background checks, 14 States only do state background checks, and 18 States do no background checks on potential drivers. State background checks are not sufficient. Someone can easily move from one State to another and leave their criminal history behind. This provision is designed to ensure that parents know who is alone with their children. Just 2 months after requiring fingerprint criminal background checks, California screened out 150 convicted sex offenders, child molesters and violent criminals who tried to get permits to drive school buses. Funding to assist states that are not already committing resources to this type of activity is provided through the Department of Education's crime free school program.

Sec. 5: Directs the Secretary to do one or more operation tests to advance the use and reduce the cost of hazard warning systems that alert school bus drivers of pedestrians or vehicles in, or approaching, the path of the school bus.

Two out of every three children killed in school bus related accidents are killed outside the school bus. Many are struck by their own school bus. The causes vary from driver inattentiveness, blind spots, or children's clothing being caught on a part of the bus causing the bus to drag the child to death. These accidents occur in the bus' "danger zone." While there are electronic devices on the market that are designed to detect and warn drivers when an object is in the danger zone, most are expensive and have reliability problems. The goal of this section is to increase the reliability and reduce the cost of existing technology.

Sec. 6: Directs to the National Transportation Safety Board to study the safety consequences of required use of safety belts in New Jersey school buses.

Approximately 10,000 school bus passengers are injured every year. Most injuries and fatalities in the bus occur during side and rollover collisions. In these types of collisions the "compartmentalized" seat does not protect children who fall about eight feet and strike the roof, windows, seats and other children. Safety belts have been standard equipment in passenger automobiles for quite some time, and they have proven to be effective life-saving and injury-preventing devices. However, not all school buses are required to be equipped with seat belts.

The debate on whether or not safety belts should be required on school buses is heated. However, the lack of sufficient data, makes an accurate estimate on the effectiveness of school bus seat belts very difficult. Therefore, my bill directs the National Transportation Safety Board to study the safety consequences of the use of safety belts in New Jersey school buses. New Jersey is the only State which has mandatory school bus safety belt use and it will provide an excellent opportunity for researchers to build the base of knowledge on this subject that we need to determine if safety belts in school buses should be the norm.

Sec. 7: Provides aid for the purpose of conducting traffic engineering activities in order to improve the safe operation of school buses in the "danger zone."

An overwhelming number of students are killed during the loading and unloading of the school bus. Proper engineering of loading and unloading zones will improve the safety and reduce the number of accidents and fatalities which take place in the "danger zone." This provision will allow States to utilize section 402(C) funds to assist in the development of safety guidelines for the construction and selection of school bus loading and un-loading zones.

Sec. 8: Requires the Secretary to begin a rulemaking process to determine the feasibility and practicality of:

A requirement for a decrease in the flammability of the materials used in the construction of the interiors of school buses;

A requirement that sellers of school buses in the secondary market inform purchasers that such buses may not meet current National Highway Transportation Safety Administration or Federal Highway Administration standards and;

Establishing construction and design standards for wheelchairs used in the transportation of students in school buses.

Reduction of the flammability of material in school buses continues to be on the National Transportation Safety Board's most wanted list. NTSB made this recommendation after the 1988 Carrollton, KY bus accident. In that incident, a pre-1977 school bus was struck by a pick-up truck. The bus' gas tank was ruptured and a fire ensued, engulfing the entire bus. The bus driver and 26 bus passengers were fatally injured. Had stricter flammability requirements been in effect during construction of this bus the NTSB believes more of the passengers could have escaped the bus without serious injury.

Used school buses are a popular form of transportation for church groups and civic organizations. Unfortunately, many of these groups believe that school buses are built to the highest safety standards available. This is not the case. Therefore, the bill would require that potential purchasers of used buses are made aware of this fact so they can modify their uses of the bus based upon the level of safety the bus offers in certain situations.

While there are Federal standards relating to how wheelchairs must be secured into school buses, there are no standards for the wheelchairs themselves. This provision is designed to ensure that students who use a wheelchair are afforded maximum protection in case of a school bus accident.

Sec. 9: Requires NHTSA to develop and disseminate guidelines on securing children under the age of five in school buses and on

evacuating those same children from school buses.

For one reason or another school districts are beginning to transport more and more children below the age of five in traditional school buses. Most, if not all, school buses and school bus seats are designed to accommodate and protect children age five and older. In addition, state laws and common sense dictate that children under the age of four use a car seat when riding in a motor vehicle. Many communities are struggling with the appropriate way to safely transport children below the age of five in school buses. This provision would require NHTSA to develop guidelines on securing young children in school buses. The provision also addresses the problems evacuation of children in car seats could pose in an emergency.

Sec. 10: Requires the Secretary to improve and distribute school bus safety information.

Every year approximately 20 children are killed outside their school bus. They are either struck by their own bus or by another vehicle. One of the most effective ways to prevent these types of accidents is to properly educate children and their parents to these dangers. While a variety of safety information is available, it is not widely distributed. This provision would require the Secretary to review existing safety material, make improvements if necessary and then ensure that the material is adequately distributed to children and parents.

Sec. 11: Require the Secretary to carry out a study to determine the following:

The extent to which public transit vehicles are engaged in school bus operations;

The point at which a public transit vehicle is sufficiently engaged in such operations as to be considered a school bus for purposes of regulation under Federal law and;

The differences between school bus operations carried out directly by schools or school districts and school bus operations carried out by schools or school districts by contract.

Federal law prohibits school districts from contracting out to the local municipal bus service to carry out the school district's pupil transportation activities. However, there are some specific exceptions to this rule. With present budget pressures school districts are increasingly looking to take advantage of these exceptions also known as "tripper service." This provision is designed to determine how many communities may be using tripper service as a means of school transportation, at what point a municipal bus engaged in tripper service should be considered a school bus, and the differences between contracted school bus operations and non-contracted school bus operations.

Sec. 12: Extends the applicability of Federal Motor Carriers Safety Regulations to the school transportation operations of Local Education Agencies.

When operating across State lines, school buses almost without exception must use the same highways—many of them high-speed arteries—as other vehicles. The speeds attained are considerably greater and there is an elevated risk of associated driver fatigue. This fact underscores the need for comprehensive and consistent application of the FMCSR's to any school bus operating across state lines when engaged in school-related and sanctioned activities.

Since their inception in 1935, the FMCSR's have been incrementally modified. For example, in 1989 the FHWA issued modifications which for the first time subjected all interstate contractor-operated school transportation operations to the FMCSR's. In 1994, the FHWA extended application of the FMCSR's to most interstate private bus operations such as scout groups and churches. My bill would extend the applicability of FMCSR's to buses used by local education agencies which are used in interstate commerce.

Sec. 13: Authorization of Appropriations.•

By Mr. DOLE (for himself, Mr. THURMOND, Mr. STEVENS, Mr. HELMS, Mr. COCHRAN, Mr. WARNER, Mr. LOTT, Mr. KYL, Mr. SMITH, Mr. INHOFE, Mr. NICKLES, Mr. KEMPTHORNE, Mr. ABRAHAM, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COATS, Mr. COHEN, Mr. SANTORUM, Mr. MACK, and Mr. DOMENICI):

S. 1635. A bill to establish a United States policy for the deployment of a national missile defense system, and for other purposes; to the Committee on Armed Services.

THE DEFEND AMERICA ACT OF 1996

Mr. DOLE. Mr. President, today I rise to introduce legislation which will have a profound impact on America's future. I am pleased to be joined by the chairman of the Armed Services and Foreign Relations Committees, the chairman of the Defense Appropriations Subcommittee, the Republican leadership, and other Republicans strongly interested in missile defense, in introducing the Defend America Act of 1996. An identical bill is being introduced in the House by the Speaker and the chairmen of the Appropriations Committee and the National Security Committee, among others. This bill addresses the most fundamental responsibility the U.S. Government has to its citizens: to protect them from harm. At present, the United States has no defense—I repeat—no defense against ballistic missiles.

The Defend America Act of 1996 answers the question of whether Americans should be protected from the threat of ballistic missile attack with a resounding "Yes." There should be no doubt that we have the technical capability to defend our great Nation from the growing threat of ballistic missiles. What we need is the will and the leadership. We have seen no leadership from the White House on this issue. Indeed, we have witnessed a complete denial from the highest levels of the administration that there is even a threat to the United States. President Clinton vetoed the fiscal year 1996 Defense authorization bill because it required developing a national missile defense system for deployment by the end of 2003. President Clinton refuses to defend America preferring to rely on the false protection of the cold-war-era antiballistic missile [ABM] treaty.

The cold war is over and the threat from ballistic missiles is real and growing. Among others, North Korea, Iran, Libya, Iraq, and Syria are seeking to obtain weapons of mass destruction and ballistic missile delivery systems. China and Russia have been engaged in transferring related components and technologies.

Just last week, the former Director of the Central Intelligence Agency, James Woolsey testified before the House National Security Committee on his views of the threat posed by ballistic missiles—as well as the current national intelligence estimate on this threat. I would like to quote from his testimony:

> We are in the midst of an era of revolutionary improvements in missile guidance. These improvements will soon make ballistic missiles much more effective for blackmail purposes . . . even without the need for warheads containing weapons of mass destruction. . . .
>
> With such guidance improvements, it is quite reasonable to believe that within a few years Saddam or the Chinese rulers will be able to threaten something far more troubling . . .

Woolsey went on to say:

> But, in current circumstances, nuclear blackmail threats against the United States may be effectively posed by North Korean intermediate ranged missiles targeted on Alaska or Hawaii, or by Chinese ICBM's targeted on Los Angeles.

With respect to the national intelligence estimate, Woolsey criticized the narrow focus of the estimate which concentrated on indigenous intercontinental ballistic missile development—as opposed to the transfer of such components and technology. As Woolsey pointed out, since the end of the cold war, Russia, China, and North Korea have been actively exporting missile technology and components. Furthermore, Woolsey noted that the national intelligence estimate only looked at the threat to the 48 continental States. Well, the last time I checked, Alaska and Hawaii were part of the United States. The bottom line is that the threat is real and we cannot wait for it to arrive on our doorstep before we act. As former Assistant Secretary of Defense Richard Perle stated before the National Security Committee, and I quote:

> If we achieve a defensive capability a little before it is absolutely necessary, no harm will have been done. But if we are too late, the result could be catastrophic. In cases like this, it is always wise to err on the side of too much, too soon, rather than too little, too late.

Mr. President, this legislation establishes a clear policy to deploy a national missile defense [NMD] system by the end of 2003, that is capable of providing a highly effective defense of U.S. territory against limited, unauthorized, or accidental ballistic missile attacks. The bill also specifies the components of a national missile defense system that are to be developed for deployment, including: An interceptor system, fixed ground-based radars, space-based sensors, and battle management, command, control, and communications.

To implement this policy, this legislation directs the Secretary of Defense

to: Promptly initiate planning to meet this deployment goal; conduct by the end of 1998, an integrated systems test using NMD components; to use streamlined acquisition procedures to reduce cost and increase efficiency; and to develop a follow-on NMD program.

The Secretary of Defense is also required to submit a detailed report to the Congress no later than March 15, 1997, which outlines his plans for implementing this policy, the estimate costs associated with the development and deployment of the NMD system, a cost and operational effectiveness analysis of follow-on options, and a determination of the point at which NMD development would conflict with the ABM Treay.

With respect to the ABM Treaty, the legislation urges the President to bring the Russians on board, by pursuing high-level discussions with Russia to amend the ABM Treaty to allow for the deployment of the NMD system specified in this act. If the Russians do agree, the legislation requires any agreement to be submitted to the Senate for advice and consent. However, if a satisfactory agreement is not reached within a year of the date of enactment of this legislation, the President and Congress will consider U.S. withdrawal from the ABM Treaty.

Mr. President, deploying a national missile defense system—which will protect all 50 States—should be our top defense priority. The Defend America Act lays out a realistic and responsible course by which we can do so.

A national missile defense system will not only defend, it will deter—by reducing the incentive of rogue regimes to acquire ballistic missiles and weapons of mass destruction.

I hope that the White House is listening. Republicans are united and clear in their message that America must be defended. We are ready to exercise leadership to fulfill our responsibility to all Americans to protect them from ballistic missile attack.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1635

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 "Defend America Act of 1996".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Although the United States possesses the technological means to develop and deploy defensive systems that would be highly effective in countering limited ballistic missile threats to its territory, the United States has not deployed such systems and currently has no policy to do so.

(2) The threat that is posed to the national security of the United States by the proliferation of ballistic missiles is significant and growing, both quantitatively and qualitatively.

(3) The trend in ballistic missile proliferation is toward longer range and increasingly sophisticated missiles.

(4) Several countries that are hostile to the United States (including North Korea, Iran, Libya, and Iraq) have demonstrated an interest in acquiring ballistic missiles capable of reaching the United States.

(5) The Intelligence Community of the United States has confirmed that North Korea is developing an intercontinental ballistic missile that will be capable of reaching Alaska or beyond once deployed.

(6) There are ways for determined countries to acquire missiles capable of threatening the United States with little warning by means other than indigenous development.

(7) Because of the dire consequences to the United States of not being prepared to defend itself against a rogue missile attack and the long-lead time associated with preparing an effective defense, it is prudent to commence a national missile defense deployment effort before new ballistic missile threats to the United States are unambiguously confirmed.

(8) The timely deployment by the United States of an effective national missile defense system will reduce the incentives for countries to develop or otherwise acquire intercontinental ballistic missiles, thereby inhibiting as well as countering the proliferation of missiles and weapons of mass destruction.

(9) Deployment by the United States of a national missile defense system will reduce concerns about the threat of an accidental or unauthorized ballistic missile attack on the United States.

(10) The offense-only approach to strategic deterrence presently followed by the United States and Russia is fundamentally adversarial and is not a suitable basis for stability in a world in which the United States and the states of the former Soviet Union are seeking to normalize relations and eliminate Cold War attitudes and arrangements.

(11) Pursuing a transition to a form of strategic deterrence based increasingly on defensive capabilities and strategies is in the interest of all countries seeking to preserve and enhance strategic stability.

(12) The deployment of a national missile defense system capable of defending the United States against limited ballistic missile attacks would (A) strengthen deterrence at the levels of forces agreed to by the United States and Russia under the START I Treaty, and (B) further strengthen deterrence if reductions below START I levels are implemented in the future.

(13) Article XIII of the ABM Treaty envisions "possible changes in the strategic situation which have a bearing on the provisions of this treaty".

(14) Articles XIII and XIV of the treaty establish means for the parties to amend the treaty, and the parties have in the past used those means to amend the treaty.

(15) Article XV of the treaty establishes the means for a party to withdraw from the treaty, upon six months notice "if it decides that extraordinary events related to the subject matter of this treaty have jeopardized its supreme interests".

(16) Previous discussions between the United States and Russia, based on Russian President Yeltsin's proposal for a Global Protection System, envisioned an agreement to amend the ABM Treaty to allow (among other measures) deployment of as many as four ground-based interceptor sites in addition to the one site permitted under the ABM Treaty and unrestricted exploitation of sensors based within the atmosphere and in space.

SEC. 3. NATIONAL MISSILE DEFENSE POLICY.

(a) It is the policy of the United States to deploy by the end of 2003 a National Missile Defense system that—

(1) is capable of providing a highly-effective defense of the territory of the United States against limited, unauthorized, or accidental ballistic missile attacks; and

(2) will be augmented over time to provide a layered defense against larger and more sophisticated ballistic missile threats as they emerge.

(b) It is the policy of the United States to seek a cooperative transition to a regime that does not feature an offense-only form of deterrence as the basis for strategic stability.

SEC. 4. NATIONAL MISSILE DEFENSE SYSTEM ARCHITECTURE.

(a) REQUIREMENT FOR DEVELOPMENT OF SYSTEM.—To implement the policy established in section 3(a), the Secretary of Defense shall develop for deployment an affordable and operationally effective National Missile Defense (NMD) system which shall achieve an initial operational capability (IOC) by the end of 2003.

(b) ELEMENTS OF THE NMD SYSTEM.—The system to be developed for deployment shall include the following elements:

(1) An interceptor system that optimizes defensive coverage of the continental United States, Alaska, and Hawaii against limited, accidental, or unauthorized ballistic missile attacks and includes one or a combination of the following:

(A) Ground-based interceptors.

(B) Sea-based interceptors.

(C) Space-based kinetic energy interceptors.

(D) Space-based directed energy systems.

(2) Fixed ground-based radars.

(3) Space-based sensors, including the Space and Missile Tracking System.

(4) Battle management, command, control, and communications (BM/C^3).

SEC. 5. IMPLEMENTATION OF NATIONAL MISSILE DEFENSE SYSTEM.

The Secretary of Defense shall—

(1) upon the enactment of this Act, promptly initiate required preparatory and planning actions that are necessary so as to be capable of meeting the initial operational capability (IOC) date specified in section 4(a);

(2) plan to conduct by the end of 1998 an integrated systems test which uses elements (including BM/C^3 elements) that are representative of, and traceable to, the national missile defense system architecture specified in section 4(b);

(3) prescribe and use streamlined acquisition policies and procedures to reduce the cost and increase the efficiency of developing the system specified in section 4(a); and

(4) develop an affordable national missile defense follow-on program that—

(A) leverages off of the national missile defense system specified in section 4(a), and

(B) augments that system, as the threat changes, to provide for a layered defense.

SEC. 6. REPORT ON PLAN FOR NATIONAL MISSILE DEFENSE SYSTEM DEVELOPMENT AND DEPLOYMENT.

Not later than March 15, 1997, the Secretary of Defense shall submit to Congress a report on the Secretary's plan for development and deployment of a national missile defense system pursuant to this Act. The report shall include the following matters:

(1) The Secretary's plan for carrying out this Act, including—

(A) a detailed description of the system architecture selected for development under section 4(b); and

(B) a discussion of the justification for the selection of that particular architecture.

(2) The Secretary's estimate of the amount of appropriations required for research, development, test, evaluation, and for procurement, for each of fiscal years 1997 through 2003 in order to achieve the initial operational capability date specified in section 4(a).

(3) A cost and operational effectiveness analysis of follow-on options to improve the effectiveness of such system.

(4) A determination of the point at which any activity that is required to be carried out under this Act would conflict with the terms of the ABM Treaty, together with a description of any such activity, the legal basis for the Secretary's determination, and an estimate of the time at which such point would be reached in order to meet the initial operational capability date specified in section 4(a).

SEC. 7. POLICY REGARDING THE ABM TREATY.

(a) ABM TREATY NEGOTIATIONS.—In light of the findings in section 2 and the policy established in section 3, Congress urges the President to pursue high-level discussions with the Russian Federation to achieve an agreement to amend the ABM Treaty to allow deployment of the national missile defense system being developed for deployment under section 4.

(b) REQUIREMENT FOR SENATE ADVICE AND CONSENT.—If an agreement described in subsection (a) is achieved in discussions described in that subsection, the President shall present that agreement to the Senate for its advice and consent. No funds appropriated or otherwise available for any fiscal year may be obligated or expended to implement such an amendment to the ABM Treaty unless the amendment is made in the same manner as the manner by which a treaty is made.

(c) ACTION UPON FAILURE TO ACHIEVE NEGOTIATED CHANGES WITHIN ONE YEAR.—If an agreement described in subsection (a) is not achieved in discussions described in that subsection within one year after the date of the enactment of this Act, the President and Congress, in consultation with each other, shall consider exercising the option of withdrawing the United States from the ABM Treaty in accordance with the provisions of Article XV of that treaty.

SEC. 8. ABM TREATY DEFINED.

For purposes of this Act, the term "ABM Treaty" means the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, and signed at Moscow on May 26, 1972, and includes the Protocols to that Treaty, signed at Moscow on July 3, 1974.

Mr. THURMOND. Mr. President, I am extremely proud to be a principal cosponsor of the Defend America Act of 1996, which was introduced by Senator DOLE today. This legislation will fill a glaring void in U.S. national security policy by requiring the deployment of a national missile defense system by 2003 that is capable of defending the United States against a limited, accidental, or unauthorized ballistic missile attack.

Ironically, most Americans already believe that we have such a system in place. This assumption is understandable since under the Constitution the President's first responsibility is to provide for the defense of the American homeland. Unfortunately, the current President has decided that this obligation is one that can be indefinitely delayed. I join Senator DOLE and others today in proclaiming that the time has come to end America's complete vulnerability to ballistic missile blackmail and attack.

The President and senior members of the administration have argued that there is no threat to justify deployment of a national missile defense system. This is simply not true. The political and military situation in the former Soviet Union has deteriorated, leading to greater uncertainty over the control and security of Russian strategic nuclear forces. China is firing missiles near Taiwan as if it were a skeet range, and has even made veiled threats against the United States. North Korea is developing an intercontinental ballistic missile that will be capable of reaching the United States once deployed. Other hostile and unpredictable countries, such as Libya, Iran, and Iraq, have made clear their desire to acquire missiles capable of reaching the United States. The technology and knowledge to produce missiles and weapons of mass destruction is available on the open market.

China's recent provocations against Taiwan highlight the need for the United States to deploy a national missile defense system as soon as possible. Although veiled threats against the United States may be only saber rattling, American military and political leaders should not ignore them. If the United States possessed even a limited national missile defense system, U.S. decision-makers would have a much greater degree of flexibility in considering our military and diplomatic options. A vulnerable America is not only subject to missile attack, but also to blackmail and intimidation.

Last year, President Clinton vetoed the Defense authorization bill mainly because it called for deployment of a national missile defense system. The administration argued that there was no need for such a system, that the threat is 10 or 15 years away. China has clearly illustrated how their judgment is flawed. The threat is here today.

If the situation should deteriorate between China and Taiwan, President Clinton will almost certainly regret the fact that the United States has no means of dealing with Chinese missile threats other than by our own nuclear threats. This is hardly a credible response. A national missile defense system, on the other hand, would eliminate the risk and uncertainty that would surely occur if China and the United States engaged in a series of nuclear threats and counterthreats. This would be an invitation for disaster. If we had an operational national missile defense system, we could confidently deal with Chinese missile threats and pursue our policies and objectives without intimidation.

The other important factor to bear in mind when considering the need for a national missile defense system, is that such a system can actually discourage countries from acquiring long-range missiles in the first place. In this sense, we should view national missile defense as a powerful nonproliferation tool, not just something to be considered some time in the future as a response to newly emerging threats.

The policy advocated in the Defend America Act of 1996 is virtually identical to that contained in the fiscal year 1996 Defense Authorization Act, which was passed by Congress and vetoed by the President. Like the legislation vetoed by the President, the Defend America Act of 1996 would require that the entire United States be protected against a limited, accidental, or unauthorized attack by the year 2003. It differs from the vetoed legislation in that it provides the Secretary of Defense greater flexibility in determining the precise architecture for the system.

The Defend America Act of 1996 urges the President to begin negotiations to amend the AMB Treaty to allow for deployment of an effective system. But it also recommends that, if these negotiations fail to produce acceptable amendments within 1 year, Congress and the President should consider withdrawing the United States from the ABM Treaty. Nothing in this legislation, however, requires or advocates abrogation or violation of the ABM Treaty.

Mr. President, 3 months ago, the President of the United States vetoed the Defense authorization bill because he opposed the deployment of a system to defend the American people against ballistic missile attack. Today, I am honored to join Senator DOLE in sending a clear message—we will not stand idly by while the United States remains undefended against a real and growing threat. The legislation we are introducing today will fulfill a constitutional, strategic, and moral obligation that has been neglected for 4 years.

Mr. MCCAIN. Mr. President, I am proud to cosponsor this legislation to establish a policy for deploying a national defense system for the United States. This bill, the National Missile Defense Act of 1996, returns the United States on a clear path toward deploying a system to defend the American people against limited, accidental, or unauthorized ballistic missile attacks.

In 1991, the Congress enacted the first Missile Defense Act, in a bipartisan effort to give direction to the Strategic Defense Initiative program, now known as the Ballistic Missile Defense program. The need for theater missile defense systems had been tragically demonstrated during the Persian Gulf war,

and it was clear that the potential threats to our continent would continue to exist, even with the collapse of the Soviet Union.

Subsequently, that policy was watered down and its deployment objectives were delayed time and again. I congratulate Senator DOLE for taking the lead today in restoring much-needed direction to our national missile defense efforts.

Our Nation has invested over $38 billion on missile defense programs over the past 15 years, with very little effective defensive capability to show for it. We are at a turning point in the development of capabilities to effectively defend our citizens and our troops deployed overseas from the devastating effects of ballistic missile attacks.

We should focus our missile defense programs on the risk of accidental or unauthorized missile launch, missile proliferation in the Third World, and particularly the risk of theater missile attacks on our forces and allies.

Deployment of effective, mobile theater missile defense systems for our troops in the field should be our first priority. To do so requires an evaluation of the many ongoing research programs to determine which demonstrates the most promise for deployable capability against battlefield missile attacks.

I am greatly disappointed that the administration chose to ignore Congressional direction and cut the theater missile defense funding approved by the Congress last year. The core programs identified in the fiscal year 1996 Defense authorization bill, including both lower and upper tier systems, must be fully funded to ensure the most effective protection for our troops in the field. I fully expect Congress to restore the funding and restate the programmatic direction to make these systems available to our forces.

At the same time, we must develop a deployment plan for an initial national missile defense system to provide an effective defense of U.S. territory against limited ballistic missile attacks. This bill establishes a goal of 2003 to deploy such a system and directs the Secretary of Defense to develop a plan to implement that goal. It is now up to the Congress to provide the funding to develop and procure the most cost-effective system.

Both efforts, toward theater and national missile defense systems, must balance the critical need for defenses with the reality of fiscal constraints. Every effort should be made to engage our allies both financially and technically in developing these systems.

Mr. President, the threat of proliferation is too great to ignore. We must not replace the nuclear confrontation of the cold war with vulnerability to dictators, extremists, and nations who threaten us with nuclear blackmail, or our forces and allies with missile attack. Without effective, deployed missile defense systems, we remain at risk.

I intend to work with Senator DOLE to achieve early passage of this legislation in the Senate, and I urge President Clinton to approve it to ensure the safety of the American people.

Mr. WARNER. Mr. President, I am proud to join the Republican leadership of both the Senate and the House, and all Republican members of the Senate Armed Services Committee, as an original cosponsor of the Defend America Act of 1996. I call on all Members of Congress to join us in our effort to protect the citizens of the United States from ballistic missile attack.

Earlier this year, President Clinton's veto of the Defense authorization bill forced us to reluctantly drop the important national missile defense provisions that we had included in that bill. At that time, we promised that we would be back with separate legislation to provide for the defense of the United States. With the introduction of today's legislation, we have fulfilled that promise and will continue the fight until this legislation is enacted into law—over President Clinton's veto, if necessary.

Many Americans find it hard to believe that we currently have no system in place which could defend our Nation against even a single intercontinental ballistic missile strike. This, despite the fact that Russia and China currently have the capability to reach our shores with their intercontinental ballistic missiles; and North Korea is well on its way to deploying a long-range missile capable of striking Alaska. In addition, over 30 nations now have short-range ballistic missiles—30 nations, many hostile to the United States. As China's saber rattling against Taiwan continues, we hear reports of veiled threats from China of a missile attack against California—something they are very capable of doing. And today's papers report that Iraq continues to possess Scud missiles.

The need for defenses against these capabilities is clear. The cold war may be over, but the desire of more and more nations to acquire ballistic missiles is growing.

But the Clinton administration believes there is no threat, and they have presented the Congress with a defense budget request which "slow rolls" our ballistic missile defense efforts. The American people deserve better.

That is why I have long been in the forefront of the Republican effort to provide both our troops deployed overseas and Americans here at home with adequate defenses to counter the very real threat of ballistic missile attack. I drafted the Missile Defense Act of 1991 which—in the aftermath of the Iraqi Scud missile attacks—set the United States on the path to acquiring and deploying theater and national missile defense systems. I also joined with my Republican colleagues on the Armed Services Committee in drafting the Missile Defense Act of 1995, an update of the earlier Missile Defense Act. Unfortunately, as I mentioned earlier, President Clinton's veto stopped that Republican effort to defend Americans.

The Defend America Act calls for the deployment of a national missile defense [NMD] system to protect the United States against limited, unauthorized or accidental ballistic missile attacks. It is important to emphasize that we are talking about a limited system—one that would provide a highly effective capability against a limited ballistic missile attack. This is precisely the type of defensive system we need to deal with the threats we are facing in the post-cold-war world.

A key difference between the Defend America Act and the missile defense legislation adopted last year, is that the current bill does not require the deployment of a specific NMD system. Rather, it establishes the requirement to deploy a system by a date certain, but leaves it to the Secretary of Defense to propose a plan by March 15, 1997, to implement this requirement. This is a prudent approach which focuses the debate on the real issue—do you want to defend the American people against ballistic missile attacks?

Mr. President, we all remember the Iraqi Scud missile attacks on our forces in Saudi Arabia, and our friends in Israel. I was in Tel Aviv during the last Scud attack—February 18, 1991.

I do not want to see U.S. citizens subjected to the terror I witnessed in Israel. I pray that we never see a time when Americans are forced to carry gas masks around because some madman is threatening our shores. We owe it to our citizens to take action now—before it is too late—to provide them with effective defenses against these types of attacks.

Mr. SMITH. Mr. President, I rise in strong support of the legislation introduced today by Senator DOLE regarding national missile defense. I am proud to be an original cosponsor, and I want to commend Senator DOLE for his steadfast commitment to defending America.

Mr. President, our Nation is walking a very dangerous tightrope. For reasons that are unknown and certainly inconceivable to most Americans, President Clinton refuses to defend our country against ballistic missiles, even though the technology to do so is available today.

The truth is our Nation is absolutely, completely vulnerable to ballistic missiles. We have no defense whatsoever against a missile targeted on our territory, our industry, our national treasures, or our people. The Patriot missiles that everyone remembers from Desert Storm 5 years ago are not capable of stopping a long-range missile. In

fact, they can only defend very small areas against short-range missiles. The Patriot is a point-defense system that we send along with our troops when they go into harm's way.

But here at home we have no defenses against long-range missiles based in China, in Russia, or in North Korea. We have no defenses against the missiles that Iran, Iraq, Syria, and Libya are so vigorously seeking to acquire. That is the truth. That is a fact. And that is unacceptable.

When told of this situation, the vast majority of Americans become enraged. They cannot understand why their elected Representatives would leave them defenseless against the likes of Saddam Hussein, Mu'ammar Qadhafi, or Kim Jong-Il. They cannot understand why the tax dollars that they contribute for national defense are not being used to protect them. Frankly, they have every right to be upset. There is simply no excuse.

The Congress agrees with the American people and took action last year to defend all Americans against ballistic missiles, whatever their source. In the Defense authorization bill for fiscal year 1996, Congress established a program to develop and deploy a national missile defense system for the United States. This program was not some elaborate star wars concept, but rather, a very modest yet capable ground-based system that would provide a limited defense of America against accidental, unauthorized, or hostile missile attacks.

But President Clinton vetoed the Defense bill specifically because of the requirement to defend America. In fact, in his statement of administration policy, the President called national missile defense quote "unwarranted and unnecessary."

Mr. President, that is a very insightful quote, and it gets right to the heart of the differences between President Clinton, Presidential candidate BOB DOLE, and the Republican Congress. To President Clinton, providing for the common defense is "unwarranted and unnecessary." To the Congress and Senator DOLE, it is the most fundamental of our constitutional responsibilities.

Simply put, this is a defining issue. It is an issue that defines our Nation's character and commitment to its people. It is an issue that defines the two parties. It is an issue that defines the very basic difference between two men who are seeking the Presidency. It is an issue that history will undoubtedly look back and pass judgment upon and, for better or worse, it is an issue that will define our generation.

Mr. President, if we fail to take action to defend America now, while we still have the chance, we will certainly regret it. At some point in the very near future, we will have waited too long. The theoretical threat of a hostile ballistic missile launch will have become a reality. And we will have no defense against it.

What will it take for President Clinton to recognize this threat? Must a ballistic missile equipped with a chemical, biological, or nuclear warhead rain down upon citizens before he will act? Must tens of thousands of Americans perish before he corrects this terrible vulnerability?

To those of us who are cosponsoring this legislation, the answer is, "No." The time to act is now, not tomorrow. Our Nation is in jeopardy. Ballistic missiles and weapons of mass destruction are spreading throughout the world and we cannot stop them. In fact, some 30 nations currently possess, or are actively acquiring, weapons of mass destruction and the missiles to deliver them.

Just yesterday, the United Nations admitted that Iraq is covertly storing up to 16 ballistic missiles armed with chemical or biological warheads. Iraq is the most inspected and thoroughly monitored country in the world. If we cannot find these missiles in the deserts of Iraq, how can we expect to track them in the mountains and valleys of China, North Korea, Iran, or Syria?

The answer is, We can't, and even if we could, we have no system to counter them. The only solution is to develop missile defenses. This bill does just that, and would require that our Nation deploy a national missile defense system capable of protecting all Americans by the year 2003.

Mr. President, this is not about politics. It is not about partisanship. It is about national security and keeping faith with those who elected us and those who depend upon us to safeguard their lives and property. If we ignore this obligation, we will have failed in our most fundamental constitutional responsibility. To me that is unacceptable. It runs against every principle that I stand for, and as long as I have a breath in my body, I will fight to prevent that from happening.

Mr. President, I want to again thank the distinguished majority leader for bringing this issue before the Senate. He does our Nation a profound service by highlighting the missile defense issue, and I am proud to cosponsor this important legislation.

I yield the floor.

By Mr. HARKIN:

S. 1637. A bill to amend the Internal Revenue Code of 1986 to revise the tax rules on expatriation, and for other purposes; to the Committee on Finance.

THE EXPATRIATION TAX REFORM ACT OF 1996

• Mr. HARKIN. Mr. President, the time has come to close one of the most outrageous tax loopholes on our books today. In fact, it is so outrageous, it's hard to believe.

But today a small number of very wealthy individuals—often billionaires—can renounce their U.S. citizenship in order to avoid paying their fair share of taxes. And under current law, those same individuals can still live in the United States for up to half a year—tax-free.

That's right. Amazingly, the current tax code has a loophole big enough for the super rich to fly their private jets right through. I call it the Benedict Arnold loophole. You can turn your back on the country that made you rich—to get even richer.

In many cases, those same people come right back to the United States. They spend up to 6 months here and claim to be citizens of another country just so they can skip out on their tax bill.

In one case, for example, a very wealthy American acquired citizenship in Belize, a small country along the Caribbean coast. Soon thereafter, Belize tried to set up a counsel's office in Florida where their new citizen had his factories. That way their new "counsel" could live in the U.S. for a large part of the year without paying his U.S. taxes. Ultimately, this was not allowed, but these types of games should be stopped once and for all.

Hard working, tax paying, middle-class Americans have every right to be outraged by these tax loopholes. They are costing Americans about $1.5 billion. And the money these wealthy tax cheats fail to pay is adding to our debt and to the bill that our kids will one day be forced to pay. That's unconscionable.

The bill I am introducing today says enough is enough: It's time to close the Benedict Arnold loophole. My legislation provides that if these so called "expatriates" spend 30 days in the United States they must pay their full taxes as a resident alien. Essentially, they would be treated like a resident alien, similar to how a U.S. citizen is treated.

In addition, my bill provides that—upon renouncing their citizenship—these individuals would pay taxes on all of their gains, including those not yet sold. Under current law they can effectively escape paying their fair share of taxes by delaying the sale of their assets through available loopholes. The Senate passed a provision in last year's Budget Reconciliation bill, but it was gutted in conference.

Where there is a problem with a bilateral tax treaty, the Secretary of the Treasury may waive the provision for that individual.

I hope that the bill I am introducing today become law this year. I urge the Senate to support and pass this common sense measure that will save taxpayer $1.5 billion.•

By Mr. PRESSLER (for himself, Mr. GLENN, Mr. D'AMATO, Mr.

KERREY, Mr. BENNETT, and Mrs. FEINSTEIN):

S. 1638. A bill to promote peace and security in South Asia; to the Committee on Foreign Relations.

THE SOUTH ASIA PEACE AND SECURITY PROMOTION ACT OF 1996

Mr. PRESSLER. Mr. President, today along with my colleagues, Senators GLENN, D'AMATO, JOHN KERRY, BENNETT, and FEINSTEIN, I am introducing legislation in an effort to restore credibility to our Nation's already damaged nuclear nonproliferation policy. Nonproliferation is one of our most important national security concerns, if not the most important. Even the President admitted last year that no issue is more important to the security of all people than nuclear nonproliferation.

At present, our efforts in this area are tied to another vital goal: the promotion of peace and security in South Asia. I have visited South Asia. I have said before it is a region of striking contrasts—a region of such enormous potential clouded by tension and instability.

As all of us well know, last year President Clinton requested, and Congress agreed to, a one time exception and partial repeal of one our most important nonproliferation laws: the so-called Pressler amendment. The Pressler amendment, approved by Congress in 1985, prohibits United States military and nonmilitary assistance to Pakistan, including arms sales, so long as Pakistan possesses a nuclear explosive device. The Senate had an extensive debate on this subject last fall. As a result of last year's exception—known as the Brown amendment—approximately 370 million dollars' worth of American military goods is scheduled for delivery to Pakistan.

The Brown amendment was very controversial. The central point of the controversy was the fact that the Brown amendment was both waiving and repealing nuclear nonproliferation law without obtaining one concrete nonproliferation concession from Pakistan. We have never provided that kind of exception to any other country before. That was one of the central reasons why I opposed the Brown amendment. I feared it would send the worst possible message: Nuclear proliferation pays.

The Clinton administration lobbied the Congress quite heavily on the Brown amendment. The administration even tried to convince Members of Congress that Pakistan did make a nonproliferation concession. The Clinton administration claimed its support for the Brown amendment was based in part on an understanding it believed it had with the Government of Pakistan. On August 3, 1995, Acting Secretary of State Peter Tarnoff stated the context of this understanding in a letter to the distinguished ranking member and former chairman of the Armed Services Committee, Senator NUNN:

> Pakistan knows that the decision to resolve the equipment problem is based on the assumption that there will be no significant change on nuclear and missile non-proliferation issues of concern to the United States.

Frankly, at the time, I felt the justification was too weak at best and unbelievable at worst. I say that from the standpoint of experience. You see, the Pressler amendment was passed with a similar assurance from Pakistan. Let me remind my colleagues that the Pressler amendment was designed to ensure that Pakistan—at that time our Nation's third largest foreign aid recipient—continued to receive United States assistance. We had an understanding that Pakistan would not develop a bomb program, and in return, we would pass the Pressler amendment so that our existing laws would not result in a United States aid cutoff. As we all know, they did build a bomb program, and continued to receive U.S. taxpayer dollars. So I had some serious misgivings and a sense of foreboding when the Clinton administration stated it was basing its support of the Brown amendment on an assurance from Pakistan.

But that was then, this is now. Now we have a clear, unequivocal statement by the Director of Central Intelligence that Pakistan did not accept the administration's position in August. This is what Director John Deutch told the Senate Select Committee on Intelligence on February 22:

> Mr. Chairman, the intelligence community continues to get accurate and timely information on Chinese activities that involve inappropriate weapons technology assistance to other countries: nuclear technology to Pakistan, M-11 missiles to Pakistan, cruise missiles to Iran.

For the record, I would like to point out that the Director said "M-11 missiles," not "M-11 missile technology."

So, the administration's assumption that the Government of Pakistan would freeze development of its bomb program was erroneous. Our intelligence community has found "accurate and timely information" that Pakistan has, indeed, made significant changes on nuclear and missile proliferation issues of concern to the United States. The nuclear technology to which Director Deutch alluded would allow Pakistan a 100-percent increase in its capacity to make enriched uranium, the explosive material of nuclear weapons. The M-11s are modern, mobile, nuclear capable ballistic missiles and clearly intended to be the principal delivery system of the Pakistani nuclear weapons system.

With the underlying assumption of the administration's position now destroyed, there is no longer any justification for the administration's support of the Brown amendment. The administration has the authority to put the Brown amendment on hold. Federal law specifically states that if the President determines that a country has delivered or received "nuclear enrichment equipment, materials or technology," no funds may be made available under the Foreign Assistance Act of 1961, which would include military equipment purchased with Foreign Military Sales [FMS]. All the President needs to do is enforce our nonproliferation laws and most, if not all of the military equipment provided by the Brown amendment remains undelivered. That is what I urged the President to do last month.

Sadly, even though Pakistan broke its assurance to the Clinton administration, it has been reported yesterday that the President intends to go through with the transfer. This is stunning news. The Brown amendment alone was a tough blow to our nonproliferation policy. Now the Clinton administration is preparing to cripple our already shaken credibility as an enforcer of nuclear nonproliferation. If that is the President's decision, and I certainly hope he reconsiders, then the law requires that he make an appropriate certification to the Congress. This gives Congress two options: First, it could disapprove of the President's certification. Under the law it would have 30 days to do that. Or, should a certification not be forthcoming, it could enact the legislation I am introducing today. This bill, which I introduce with bipartisan support, simply repeals the Brown amendment.

Mr. President, I believe passage of this legislation is necessary if our Nation's nuclear nonproliferation policy is to have any credibility. Indeed, beyond the simple policy justifications for this legislation, I urge my colleagues to keep in mind the circumstance that brings me to the floor today. As I stated a moment ago, Pakistan's receipt of nuclear technology from China is a sanctionable offense, as is its receipt of M-11 missile technology. What makes these offenses disturbing is that they were occurring while Pakistan was lobbying the administration and Congress to waive and partially repeal nuclear nonproliferation law. Equally disturbing are reports that members of the Clinton administration knew of the ring magnet transfer at that time, but did not divulge this information to members of Congress. The irony would be humorous if the issue wasn't so serious.

I believe that if all my colleagues were aware of this blatant violation of our non-proliferation laws last fall, the Brown amendment would have failed. Indeed, a supporter of the Brown amendment, Congressman DOUG BEREUTER, admitted that if the Brown amendment was reconsidered, its passage would be unlikely. I am confident enough that this Congress understands the seriousness of this matter and would agree that we need to repeal the

Brown amendment or at least suspend its implementation until the underlying policy of the administration is restored—that being the return of the ring magnets and the M-11s from Pakistan to China.

Mr. President, finally a word about South Asia. Also on February 22, CIA Director Deutch named South Asia as his No. 1 worry in the annual world wide threat assessment. He noted, "the potential for conflict is high." Just a few weeks ago, the Washington Post reported that Pakistan is preparing for a possible nuclear weapons test. Even a limited nuclear exchange between Pakistan and India would result in deaths and destruction on an unprecedented scale in world history. Under the circumstances, I feel it would be the height of irresponsibility to allow for military aid to one side in such an unstable environment. The aftermath of the Brown amendment is proof that our relationship with India is impacted by United States nonproliferation policy. Because of India's unsafeguarded nuclear program, there is no United States-Indian agreement for nuclear cooperation. United States military cooperation with India is virtually nonexistent. The United States will not export certain forms of missile equipment and technology to India and any other goods that are related to weapons of mass destruction. It is true that United States sanctions have not been invoked against India, but that is because India has not violated its commitments under United States law.

I stand ready to seek a commonsense approach to improve our relations with all the countries in South Asia. We need a commonsense approach to deal with the problems in that troubled region. Illicit narcotics trafficking, terrorism, economic stagnation, and weapons proliferation are just some of the issues that plague South Asia. We must seek ways to help these countries address all these problems. I am ready to start that process. We can start by repealing the Brown amendment and begin working on an approach that serves the mutual interests of the people of the United States and the people of South Asia.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1638

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

SECTION 1. PROMOTION OF PEACE AND SECURITY IN SOUTH ASIA.

(a) FINDINGS.—Congress makes the following findings:

(1) The American people fervently desire that all the peoples of South Asia enjoy peace and share an increased sense of security.

(2) The peace and security of South Asia are threatened by an arms race, particularly the spread of weapons of mass destruction and their modern delivery systems.

(3) Congress has granted both a one-time exception to and partial repeal of United States nuclear nonproliferation laws in order to permit the Government of Pakistan to receive certain United States military equipment and training and limited economic aid.

(4) The exception and partial repeal was based on direct assurances to the United States Government that "there will be no significant change on nuclear and missile nonproliferation issues of concern to the United States".

(5) The Director of Central Intelligence has informed Congress that Pakistan has taken recent delivery of "nuclear technology" and "M-11 missiles" from the People's Republic of China.

(6) The justification for the exception to and partial repeal of United States nonproliferation laws is no longer valid.

(b) REPEAL.—Section 620E of the Foreign Assistance Act of 1961 (22 U.S.C. 2375) is amended to read as if the amendments made to such section by section 559 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (Public Law 104-107) had not been made.

Mr. KERRY. Mr. President, last September the Senate approved an amendment offered by Senator BROWN that allowed the administration to deliver hundreds of millions of dollars worth of military equipment to Pakistan. In doing so, we decided to ignore Pakistan's continuing efforts to acquire nuclear weapons and the ballistic missiles to carry them, and we turned our backs on United States non-proliferation law and international arms control agreements. Today, I am pleased to cosponsor a bill being introduced by Senator PRESSLER that will repeal this misguided provision and will help put U.S. nonproliferation policy back on track.

During Senate consideration of the Brown amendment, the proponents, including the administration, argued that transferring the military equipment would remove what had become an irritant in our relations with Pakistan and would result in enhanced cooperation on nonproliferation issues. Unfortunately, the opposite has happened.

Even as we debated the Brown amendment we had clear and convincing evidence that Pakistan had received M-11 ballistic missiles from China—a sanctionable offense under the Missile Technology Control Regime. We now know that Pakistan also has continued to pursue its Nuclear Weapons Program. In an unclassified hearing earlier this year, Director of Central Intelligence John Deutch testified to the Intelligence Committee that he was especially concerned about Pakistani efforts to acquire nuclear technology. Although he did not provide details, the press has reported that last summer China sent Pakistan specialized magnets for use in centrifuges to produce enriched uranium. Such a transfer would violate the 1994 Nuclear Non-Proliferation Act. Finally, Director Deutch told the Intelligence Committee that Pakistan was likely to test a nuclear weapon if India did, hardly the restraint we were promised.

Since the late 1970's the Pakistani Government has repeatedly assured the United States that it does not possess nuclear weapons despite our certainty that it does. As recently as November of 1994, Prime Minister Bhutto said in an interview with David Frost "We have neither detonated one, nor have we got nuclear weapons." Now they are practicing the same deception with regard to acquiring missiles from China. In July of 1995, a press release from the Pakistan Embassy asserted that "Pakistan has not acquired the M-11 or any other missile from China that violates the Missile Technology Control Regime." The evidence to the contrary is, in my opinion, overwhelming.

Pakistan has been a friend and ally of the United States since its independence. But how many times can you let a friend mislead you and how many times can you let a friend put you in danger before you are forced to change the nature of the relationship. This is not a question of whether we want good relations with Pakistan. Of course we do. We want good relations with all countries, but the proliferation of weapons of mass destruction and the delivery systems to carry them is far more important to our national security than relations with any one country. Indeed, this is one of the most important national security issues facing us today.

I congratulate my colleague from South Dakota for his leadership on this issue and I am pleased to cosponsor his legislation. I hope that we can address this issue before the transfer of this equipment is completed.

By Mr. DOLE (for himself, Mr. THURMOND, Mr. WARNER, and Mr. GRAMM):

S. 1639. A bill to require the Secretary of Defense and the Secretary of Health and Human Services to carry out a demonstration project to provide the Department of Defense with reimbursement from the Medicare Program for health care services provided to Medicare-eligible beneficiaries under TRICARE; to the Committee on Finance.

MEDICARE SUBVENTION LEGISLATION

Mr. DOLE. Mr. President, today I am pleased to introduce legislation which will demonstrate the cost effectiveness of Medicare reimbursement to the Department of Defense [DOD] for treatment of military beneficiaries age 65 and older. This bill will enable these individuals to enroll in Tricare Prime and be treated in military hospitals.

CURRENT SYSTEM IS FLAWED

As I am sure my colleagues know, Tricare is DOD's new managed health care program. While Tricare has merit, it also has flaws: It bars all Medicare-eligible retirees and family members

from enrolling in Tricare Prime. In fact, all career military members and their families eventually will be affected, because even those who enroll now will be dropped from Tricare at age 65, when they become eligible for Medicare. In my view, this breaks long standing health care commitments to retirees, may increase costs, and affect military readiness.

IDENTIFYING THE PROBLEM

Current law inadvertently encourages DOD and Medicare to work against each other. As the defense budget tightens, DOD has a strong incentive to push older retirees and families out of the military medical system and back into Medicare, although Medicare probably costs both the Government and retirees more money than care under the military system. Theoretically, Medicare-eligible retirees may still use military hospitals on a space-available basis. However, space-available care is rapidly becoming nonexistent as military facilities downsize and Tricare expands across the country.

MEDICARE SUBVENTION IS THE SOLUTION

It seems to me, the solution to this problem is to change the law to allow Medicare subvention, allowing Medicare to reimburse DOD for care provided to older beneficiaries enrolling in Tricare Prime or otherwise using military hospitals.

DEMONSTRATION TEST OF MEDICARE SUBVENTION

We need to demonstrate to the interested parties, Department of Health and Human Services, and Department of Defense, that subvention is indeed a feasible and cost-effective program. Therefore I am introducing the legislation which gives those agencies the authority to conduct such a test. I believe this test will justify implementing subvention and allow those eligible military retirees over 65 to participate in Tricare Prime and receive care in military hospitals.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1639

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

SECTION 1. DEMONSTRATION PROJECT FOR MEDICARE REIMBURSEMENT OF DEPARTMENT OF DEFENSE FOR HEALTH CARE PROVIDED TO MEDICARE-ELIGIBLE BENEFICIARIES UNDER TRICARE.

(a) IN GENERAL.—Notwithstanding any other provision of law and subject to subsection (b), the Secretary of Defense and the Secretary of Health and Human Services shall enter into an agreement in order to carry out a demonstration project under which the Secretary of Health and Human Services reimburses the Secretary of Defense, on a capitated basis, from the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for certain health care services provided by the Secretary of Defense to medicare-eligible military beneficiaries through the TRICARE program.

(b) PROJECT REQUIREMENTS.—(1)(A) The Secretary of Defense shall budget for and expend on health care services in each region in which the demonstration project is carried out an amount equal to the amount that the Secretary would otherwise budget for and expend on such services in the absence of the project.

(B) The Secretary may not be reimbursed under the project for health care services provided to medicare-eligible military beneficiaries in a region until the amount expended by the Secretary to provide health care services in that region exceeds the amount budgeted for health care services in that region under subparagraph (A).

(2) The agreement between the Secretary of Defense and the Secretary of Health and Human Services shall provide that the cost to the medicare program of providing services under the project does not exceed the cost that the medicare program would otherwise incur in providing such services in the absence of the project.

(3) The authority of the Secretary of Defense to carry out the project shall expire 3 years after the date of the commencement of the project.

(c) REPORTS.—Not later than 14 months after the commencement of the demonstration project under subsection (a), and annually thereafter until the year following the year in which the project is terminated, the Secretary of Defense and the Secretary of Health and Human Services shall jointly submit to Congress a report on the demonstration project. The report shall include the following:

(1) The number of medicare-eligible military beneficiaries provided health care services under the project during the previous year.

(2) An assessment of the benefits to such beneficiaries of receiving health care services under the project.

(3) A description of the cost-shifting, if any, among medical care programs of the Department of Defense that results from the project.

(4) A description of the cost-shifting, if any, from the Department to the medicare program that results from the project.

(5) An analysis of the effect of the project on the following:

(A) Access to the military medical treatment system, including access to military medical treatment facilities.

(B) The availability of space and facilities and the capabilities of medical staff to provide fee-for-service medical care.

(C) Established priorities for treatment of beneficiaries under chapter 55 of title 10, United States Code.

(D) The cost to the Department of providing prescription drugs to the beneficiaries described in subparagraph (C).

(E) The quality of health care provided by the Department.

(F) Health care providers and medicare-eligible military beneficiaries in the communities in which the project is carried out.

(6) An assessment of the effects of continuing the project on the overall budget of the Department for health care and on the budget of each military medical treatment facility.

(7) An assessment of the effects of continuing the project on expenditures from the medicare trust funds under title XVIII of the Social Security Act.

(8) An analysis of the lessons learned by the Department as a result of the project.

(9) Any other information that the Secretary of Defense and the Secretary of Health and Human Services jointly consider appropriate.

(d) REVIEW BY COMPTROLLER GENERAL.—Not later than December 31 each year in which the demonstration project is carried out under this section, the Comptroller General shall determine and submit to Congress a report on the extent, if any, to which the costs of the Secretary of Defense under the TRICARE program and the costs of the Secretary of Health and Human Services under the medicare program have increased as a result of the project.

(e) DEFINITIONS.—For purposes of this section:

(1) The term "medicare-eligible military beneficiary" means a beneficiary under chapter 55 of title 10, United States Code, who is entitled to benefits under part A of title XVIII of the Social Security Act.

(2) The term "TRICARE program" means the managed health care program that is established by the Secretary of Defense under the authority of chapter 55 of title 10, United States Code, principally section 1097 of that title, and includes the competitive selection of contractors to financially underwrite the delivery of health care services under the Civilian Health and Medical Program of the Uniformed Services.

ADDITIONAL COSPONSORS

S. 704

At the request of Mr. SIMON, the name of the Senator from Rhode Island [Mr. CHAFEE] was added as a cosponsor of S. 704, a bill to establish the Gambling Impact Study Commission.

S. 1139

At the request of Mr. LOTT, the name of the Senator from Virginia [Mr. ROBB] was added as a cosponsor of S. 1139, a bill to amend the Merchant Marine Act, 1936, and for other purposes.

S. 1150

At the request of Mr. SANTORUM, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Virginia [Mr. ROBB] were added as cosponsors of S. 1150, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the Marshall Plan and George Catlett Marshall.

S. 1183

At the request of Mr. HATFIELD, the name of the Senator from Rhode Island [Mr. PELL] was added as a cosponsor of S. 1183, a bill to amend the Act of March 3, 1931 (known as the Davis-Bacon Act), to revise the standards for coverage under the act, and for other purposes.

S. 1188

At the request of Mr. SANTORUM, the name of the Senator from New Hampshire [Mr. GREGG] was added as a cosponsor of S. 1188, a bill to provide marketing quotas and a price support program for the 1996 through 1999 crops of quota and additional peanuts, to terminate marketing quotas for the 2000 and subsequent crops of peanuts, and

to provide a price support program for the 2000 through 2002 crops of peanuts, and for other purposes.

S. 1317

At the request of Mr. D'AMATO, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 1317, a bill to repeal the Public Utility Holding Company Act of 1935, to enact the Public Utility Holding Company Act of 1995, and for other purposes.

S. 1355

At the request of Mr. DORGAN, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of S. 1355, a bill to amend the Internal Revenue Code of 1986 to end deferral for U.S. shareholders on income of controlled foreign corporations attributable to property imported into the United States.

S. 1470

At the request of Mr. MCCAIN, the name of the Senator from Florida [Mr. MACK] was added as a cosponsor of S. 1470, a bill to amend title II of the Social Security Act to provide for increases in the amounts of allowable earnings under the Social Security earnings limit for individuals who have attained retirement age, and for other purposes.

S. 1521

At the request of Mr. DOLE, the name of the Senator from Kentucky [Mr. FORD] was added as a cosponsor of S. 1521, a bill to establish the Nicodemus National Historic Site in Kansas, and for other purposes.

S. 1597

At the request of Mr. DORGAN, the names of the Senator from Illinois [Mr. SIMON], the Senator from Nebraska [Mr. EXON], the Senator from West Virginia [Mr. BYRD], the Senator from Arkansas [Mr. PRYOR], the Senator from Colorado [Mr. CAMPBELL], the Senator from Iowa [Mr. HARKIN], and the Senator from Minnesota [Mr. WELLSTONE] were added as cosponsors of S. 1597, a bill to amend the Internal Revenue Code of 1986 to discourage American businesses from moving jobs overseas and to encourage the creation of new jobs in the United States, and for other purposes.

S. 1610

At the request of Mr. BOND, the name of the Senator from Texas [Mrs. HUTCHISON] was added as a cosponsor of S. 1610, a bill to amend the Internal Revenue Code of 1986 to clarify the standards used for determining whether individuals are not employees.

S. 1612

At the request of Mr. HELMS, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1612, a bill to provide for increased mandatory minimum sentences for criminals possessing firearms, and for other purposes.

SENATE RESOLUTION 202

At the request of Mr. ABRAHAM, the names of the Senator from Arkansas [Mr. BUMPERS], the Senator from Mississippi [Mr. COCHRAN], the Senator from South Dakota [Mr. DASCHLE], the Senator from Wisconsin [Mr. FEINGOLD], the Senator from Texas [Mr. GRAMM], the Senator from Oregon [Mr. HATFIELD], the Senator from Texas [Mrs. HUTCHISON], the Senator from Hawaii [Mr. INOUYE], the Senator from Vermont [Mr. JEFFORDS], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Massachusetts [Mr. KERRY], the Senator from Vermont [Mr. LEAHY], the Senator from Connecticut [Mr. LIEBERMAN], the Senator from Michigan [Mr. LEVIN], the Senator from Mississippi [Mr. LOTT], the Senator from Kentucky [Mr. MCCONNELL], the Senator from Alaska [Mr. STEVENS], and the Senator from Tennessee [Mr. THOMPSON] were added as cosponsors of Senate Resolution 202, a resolution concerning the ban on the use of United States passports for travel to Lebanon.

AMENDMENTS SUBMITTED

THE PUBLIC RANGELANDS MANAGEMENT ACT OF 1996 NATIONAL GRASSLANDS MANAGEMENT ACT OF 1996

BINGAMAN (AND OTHERS) AMENDMENT NO. 3559

Mr. BINGAMAN (for himself, Mr. DORGAN, Mr. REID, Mr. BRYAN, and Mr. DASCHLE) proposed an amendment to amendment No. 3555 proposed by Mr. DOMENICI to the bill (S. 1459) to provide for uniform management of livestock grazing on Federal land, and for other purposes; as follows:

In lieu of the matter proposed insert the following new language:

SECTION 101. SHORT TITLE.

This title may be cited as the "Public Rangelands Management Act of 1996".

SEC. 102. DEFINITIONS.

As used in this title, the term—

(1) "public land" has the same meaning as given in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e));

(2) "Secretary" means the Secretary of the Interior, or where appropriate, the Secretary acting through the Bureau of Land Management; and

(3) "Secretary of Agriculture" means, where appropriate, the Secretary acting through the Forest Service.

SEC. 103. APPLICABILITY.

(a) BUREAU OF LAND MANAGEMENT LANDS.—This title shall apply to the grazing of livestock on public lands administered by the Secretary. Except as otherwise provided in this title, grazing on public lands administered by the Secretary shall be managed in accordance with applicable laws and regulations.

(b) FOREST SERVICE LANDS.—(1) Except as provided in section 113 (concerning the applicability of NEPA provisions), section 115 (establishing a new grazing fee formula), and section 116 (concerning expenditures of grazing fee receipts) livestock grazing on National Forest System lands in the sixteen contiguous Western States shall be managed in accordance with applicable laws and regulations.

(2) None of the provisions of this title shall apply to livestock grazing on National Forest System lands outside of the sixteen contiguous Western States. Livestock grazing on those lands shall be administered by the Secretary of Agriculture in accordance with applicable laws and regulations.

(c) NATIONAL GRASSLANDS.—Livestock grazing on the National Grasslands shall be administered in accordance with title II of this Act, except that sections 113 and 115 of title I shall also apply to the National Grasslands.

(d) COORDINATED MANAGEMENT.—(1) The Secretary and the Secretary of Agriculture shall seek to provide, to the maximum extent practicable, for consistent and coordinated grazing activities and management practices on lands in the sixteen contiguous Western States administered by the Forest Service (excluding the National Grasslands) and the Bureau of Land Management, consistent with the laws governing the public lands and the National Forest System.

(2) To the extent current regulations are inconsistent with the provisions of this title, the Secretary and the Secretary of Agriculture, as necessary, shall promulgate new regulations in accordance with this title.

SEC. 104. RANGELAND HEALTH STANDARDS AND GUIDELINES.

(a) IN GENERAL.—The Secretary, in consultation with the Resource Advisory Councils established in section 108, the Grazing Advisory Boards established in section 109, and appropriate State and local governmental and educational entities, and after providing an opportunity for public participation, shall establish State-wide or regional standards and guidelines to ensure the health and continued improvement of public land range conditions: *Provided, however,* That nothing in this title shall be construed as requiring the establishment of a minimum national standard for public land range conditions.

(b) CRITERIA.—Such standards and guidelines shall seek to ensure that—

(1) watersheds are in, or are making significant progress toward properly functioning condition;

(2) upland soils exhibit stability and infiltration and permeability rates that are appropriate to soil type, climate, and landform;

(3) ecological processes, including the hydrological cycle, nutrient cycle, and energy flow are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities;

(4) water quality complies with State water quality standards; and

(5) healthy, productive, and diverse native plant and animal populations are being supported.

(c) INCORPORATION.—Standards and guidelines developed for a specific region pursuant to this section shall, upon completion, be incorporated by operation of law into applicable land use plans. Standards and guidelines shall also be incorporated into allotment management plans and the terms and conditions of grazing permits and leases.

SEC. 105. PUBLIC PARTICIPATION.

(a) IN GENERAL.—In developing and revising land use plans, allotment management

plans, activity plans, and rangeland standards and guidelines, the Secretary shall provide appropriate opportunities for public participation.

(b) AFFECTED INTEREST.—An individual or organization that has expressed in writing to the Secretary concern for the management of livestock grazing on specific allotments and who has been determined by the Secretary to be an affected interest, shall be consulted on significant grazing actions and decisions taken by the Secretary. Such consultation shall include, but need not be limited to, providing notice of the proposed action or decision and the reasons therefore, and a reasonable time in which to submit comments on the proposed action or decision.

(c) ABILITY TO PROTEST.—An applicant, permittee, lessee, or affected interest shall be entitled to protest proposed decisions of the Secretary.

SEC. 106. TERMS AND CONDITIONS.

(a) IN GENERAL.—The Secretary shall include such reasonable terms and conditions in a grazing permit or lease as the Secretary determines to be appropriate to achieve management and resource condition objectives.

(b) MODIFICATION.—Following careful and considered consultation, cooperation, and coordination with lessees, permittees, and other affected interests, the Secretary may modify terms and conditions of a grazing permit or lease if monitoring data or objective evidence shows that present grazing use is not meeting management and resource condition objectives.

(c) MONITORING.—(1) Monitoring shall be conducted at a sufficient level to enable the Secretary to determine the effectiveness of management toward meeting management and resource condition objectives and to issue decisions or enter into agreements requiring management changes. The Secretary shall seek to ensure that monitoring is conducted in a timely and consistent manner.

(2) Monitoring shall be conducted according to regional or State-wide scientifically-based criteria and protocals. The criteria and protocals shall be developed by the Secretary in consultation with applicable Resource Advisory Councils, Grazing Advisory Boards, and appropriate State entities.

SEC. 107. RANGE IMPROVEMENTS.

(a) PERMANENT IMPROVEMENTS.—(1) The Secretary may authorize the installation of permanent range improvements by permittees, lessees, or other parties pursuant to cooperative agreements. Title to permanent range improvements constructed or installed after the date of enactment of this title shall be in the name of the United States.

(2) If the Secretary cancels a grazing permit or lease in whole or in part in order to devote the lands covered by the permit to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of the permittee's or lessee's interest in authorized permanent improvements placed or constructed on the lands covered by the canceled permit or lease. The adjusted value shall be determined by the Secretary, not to exceed fair market value of the terminated portion of the permittee's or lessee's interest therein.

(b) TEMPORARY IMPROVEMENTS.—The Secretary may authorize the installation of temporary range improvements by permittees, lessees, or other parties pursuant to range improvements permits. Title to temporary range improvements shall be in the name of the permittee or lessee, where no part of the cost for the improvement is borne by the United States

(c) VALID EXISTING RIGHTS.—Nothing in this section shall affect valid existing rights to range improvements existing prior to the date of enactment of this title.

(d) NO INTEREST IN LANDS.—A range improvement permit or cooperative agreement does not convey to a permittee or lessee any right, title, or interest in any lands or resources held by the United States.

SEC. 108. RESOURCE ADVISORY COUNCILS.

(A) ESTABLISHMENT.—The Secretary, in consultation with the Governors of the affected States, shall establish and operate Resource Advisory Councils on a regional, State, or planning area level to provide advice on management issues for all lands administered by the Bureau of Land Management within such State or regional area, except where the Secretary determines that there is insufficient interest in participation on a council to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed.

(b) DUTIES.—Each Resource Advisory Council shall advise the Secretary regarding the preparation, amendment, and implementation of land use and activity plans for public lands and resources within its area.

(c) MEMBERSHIP.—(1) The Secretary, in consultation with the Governor of the affected State or States, shall appoint the members of each Resource Advisory Council. A council shall consist of not less than 9 members and not more than 15 members.

(2) In appointing members to a Resource Advisory Council, the Secretary shall provide for balanced and broad representation from among various groups, including but not limited to, permittees and lessees, other commercial interests, recreational users, representatives of recognized environmental or conservation organizations, educational, professional, or academic interests, representative of State and local government or governmental agencies, Indian tribes, and other members of the affected public.

(3) The Secretary shall appoint at least one elected official of general purpose government serving the people of the area to each Resource Advisory Council.

(4) No person may serve concurrently on more than one Resource Advisory Council.

(5) Members of a Resource Advisory Council must reside in one of the States within the geographic jurisdiction of the council.

(d) SUBGROUPS.—A Resource Advisory Council may establish such subgroups as the council deems necessary, including but not limited to working groups, technical review teams, and rangeland resource groups

(e) TERMS.—Resource Advisory Council members shall be appointed for 2-year terms. Members may be appointed to additional terms at the discretion of the Secretary.

(f) PER DIEM EXPENSES.—Resource Advisory Council members shall serve without compensation as such, but shall be reimbursed for travel and per diem expenses while on official business, as authorized by 5 U.S.C. 5703.

(g) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this section, the Federal Advisory Committee Act shall apply to the Resource Advisory Councils established under this section.

(h) OTHER FLPMA ADVISORY COUNCILS.—Nothing in this section shall be construed as modifying the authority of the Secretary to establish other advisory councils under section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739).

SEC. 109. GRAZING ADVISORY BOARDS.

(a) ESTABLISHMENT.—For each district office of the Bureau of Land Management in the sixteen contiguous Western States having jurisdiction over more than 500,000 acres of public lands subject to commercial livestock grazing, the Secretary, upon the petition of a simple majority of livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one Grazing Advisory Board of not more than 15 members.

(b) FUNCTION.—The function of the Grazing Advisory Boards established pursuant to this section shall be to provide advice to the Secretary concerning management issues directly related to the grazing of livestock on public lands within the area administered by the district office.

(c) MEMBERS.—(1) The number of members on each Grazing Advisory Board shall be determined by the Secretary. Members shall serve for a term of 2 years. One-half of the members of each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the district office and who shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary. The remaining members shall be appointed by the Secretary from among residents of the area, to represent other interests.

(2) No person may serve concurrently on more than one Grazing Advisory Board.

(d) PER DIEM EXPENSES.—Grazing Advisory Board members shall serve without compensation as such, but shall be reimbursed for travel and per diem expenses while on official business, as authorized by 5 U.S.C. 5703.

(e) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this section, the Federal Advisory Committee Act shall apply to the Grazing Advisory Boards established under this section.

SEC. 110. ALLOTMENT MANAGEMENT PLANS.

Where practicable, feasible, and appropriate, the Secretary shall develop allotment management plans (or other activity plans serving as the functional equivalent thereof). Such plans shall be prepared in consultation, cooperation and coordination with permittees or lessees, Resource Advisory Councils, Grazing Advisory Boards, and affected interests.

SEC. 111. CONSERVATION AND TEMPORARY NON-USE.

(a) IN GENERAL.—(1) The Secretary may approve a request by a permittee or lessee for temporary non-use or conservation use if such use is determined by the Secretary to be not inconsistent with the applicable land use plans, allotment management plans, or other applicable plans.

(2) In developing criteria and standards for conservation use and temporary non-use, the Secretary shall consult with applicable Resource Advisory Councils and Grazing Advisory Boards.

(b) CONSERVATION USE.—(1) Conservation use may be approved for periods of up to ten years when, in the determination of the Secretary, the proposed conservation use will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward achieving resource condition objectives.

(2) Conservation use shall be a voluntary action on the part of a permittee or lessee. No such use shall be approved by the Secretary unless requested by a permittee or lessee.

(c) TEMPORARY NON-USE.—Temporary non-use for reasons including but not limited to financial conditions or annual fluctuations

of livestock, may be approved by the Secretary on an annual basis for no more than 3 consecutive years.

(d) The Secretary shall not approve applications for non-renewable grazing permits and leases for areas for which conservation use has been authorized. Forage made available as a result of temporary non-use may be made available to qualified applicants.

(e) DEFINITION.—As used in this section, the term—

(1) "conservation use" means an activity, excluding livestock grazing, on all or a portion of a grazing allotment for the purposes of—

(A) protecting the land and its resources from destruction or unnecessary injury.

(B) improving rangeland conditions; or

(C) enhancing resource values, uses, or functions;

(2) "temporary non-use" means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use, in response to a request of a permittee or lessee.

SEC. 112. WATER RIGHTS.

(a) IN GENERAL.—New water rights shall be acquired, perfected, maintained, or administered in connection with livestock grazing on public lands in accordance with State law.

(b) NO FEDERAL RESERVED WATER RIGHT.—Nothing in this title shall be construed as creating an express or implied reservation of water rights in the United States.

(c) VALID EXISTING RIGHTS.—Nothing in this title shall be construed as affecting valid existing water rights.

SEC. 113. NEPA COMPLIANCE.

(a) RENEWALS OR TRANSFERS.—Unless the Secretary or the Secretary of Agriculture, as appropriate, determines that the renewal or transfer of a grazing permit or lease will involve significant changes in management practices or use, or that significant environmental damage is occurring or is imminent, the renewal or transfer of such permit or lease shall not require the completion of any analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) RANGELAND MANAGEMENT ACTIVITIES.—(1) The Secretary and the Secretary of Agriculture shall expedite the consideration of applications for non-significant grazing activities on Federal lands administered by the respective Secretary, including the development of a list of activities (or mandatory eligibility criteria) that would constitute a "categorical exclusion" from consideration under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) where the Secretary concerned determines that such activities would not have a significant effect on the environment.

(2) Nothing in this subsection shall preclude the Secretary or the Secretary of Agriculture, as appropriate, from requiring additional analysis where the Secretary concerned determines that the proposed activity may have a significant effect on the environment.

SEC. 114. GRAZING FEE SURCHARGE.

No grazing fee surcharge shall be imposed for grazing use by a spouse, child, or grandchild of the permittee or lessee on the lands covered by the permit or lease.

SEC. 115. GRAZING FEE.

(a) IN GENERAL.—(1) The fee for each animal unit month in a grazing fee year to be determined by the Secretary and the Secretary of Agriculture shall be equal to the three-year average of the total gross value production for beef cattle for the three years preceeding the grazing fee year, multiplied by the ten-year average of the United States Treasury Securities six-month bill "new issue" rate, divided by twelve: *Provided*, That the grazing fee shall not be less than $1.50 per animal unit month.

(2) The gross value of production for beef cattle shall be determined by the Economic Research Service of the Department of Agriculture in accordance with subsection (e)(1).

(b) DEFINITION OF ANIMAL UNIT MONTH.—For billing purposes only, the term "animal unit month" means one month's use and occupancy of range by—

(1) one cow, bull, steer, heifer, horse, burro, or mule; or seven sheep or goats; each of which is six months of age or older on the date on which the animal begins grazing on Federal land;

(2) any such animal regardless of age if the animal is weaned on the date on which the animal begins grazing on Federal lands; and

(3) any such animal that will become twelve months of age during the period of use authorized under a grazing permit or lease.

(c) LIVESTOCK NOT COUNTED.—There shall not be counted as an animal unit month the use of Federal land for grazing by an animal that is less than six months of age on the date which the animal begins grazing on Federal land and that is the natural progeny of an animal on which a grazing fee is paid if the animal is removed from the Federal land before becoming twelve months of age.

(d) OTHER FEES AND CHARGES.—(1) A service charge shall be assessed for each crossing permit, transfer of grazing preference, and replacement or supplemental billing notice except in a case in which the action is initiated by the authorized officer.

(2) The fees and charges under section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)) shall reflect processing costs and shall be adjusted periodically as costs change.

(3) Notice of a change in a service charge shall be published in the Federal Register.

(e) CRITERIA FOR ERS.—(1) The Economic Research Service of the Department of Agriculture shall continue to compile and report the gross value of production of beef cattle, on a dollars-per-bred-cow basis for the United States, as currently published in "Economic Indicators of the Farm Sector: Cost of Production—Major Field Crops and Livestock and Dairy" (Cow-calf production cash costs and returns).

(2) For the purposes of a determining a grazing fee for a given grazing fee year, the gross value of production (as defined in subsection (a)) for the previous calendar year shall be made available to the Secretary and the Secretary of Agriculture, and published in the Federal Register, on or before February 15 of each year.

SEC. 116. USE OF STATE SHARE OF GRAZING FEE RECEIPTS.

Section 10 of the Act of June 28, 1934 (commonly known as the "Taylor Grazing Act") (43 U.S.C. 315i) is amended—

(1) in subsection (a), by striking "the benefit of" and inserting in lieu thereof "investment in all forms of on-the-ground improvements that benefit rangeland resources, and for support of local public schools in"; and

(2) in subsection (b), by striking "the benefit of" and inserting in lieu thereof "investment in all forms of on-the-ground improvements that benefit rangeland resources, and for support of local public schools in".

SEC. 117. CONSIDERATION OF ACTIONS BY AFFILIATES.

In issuing or renewing grazing permits or leases, the Secretary may only consider acts undertaken by—

(1) the permittee or lessee;

(2) persons under the direct control of the permittee or lessee; or

(3) persons acting in collusion with the permittee or lessee.

TITLE II—MANAGEMENT OF NATIONAL GRASSLANDS

SEC. 201. SHORT TITLE.

This title may be cited as the "National Grasslands Management Act of 1996".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the inclusion of the National Grasslands within the National Forest System has prevented the Secretary of Agriculture from effectively administering and promoting grassland agriculture on National Grasslands as originally intended under the Bankhead-Jones Farm Tenant Act;

(2) the National Grasslands can be more effectively managed by the Secretary of Agriculture if administered as a separate entity outside of the National Forest System; and

(3) a grazing program on National Grasslands can be responsibly carried out while protecting and preserving recreational, environmental, and other multiple uses of the National Grasslands.

(b) PURPOSE.—The purpose of this title is to provide for improved management and more efficient administration of grazing activities on National Grasslands while preserving and protecting multiple uses of such lands, including but not limited to preserving hunting, fishing, and recreational activities, and protecting wildlife and wildlife habitat in accordance with applicable laws.

SEC. 203. DEFINITIONS.

As used in this title, the term—

(1) "National Grasslands" means those areas managed as National Grasslands by the Secretary of Agriculture under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012) on the day before the date of enactment of this title; and

(2) "Secretary" means the Secretary of Agriculture.

SEC. 204. REMOVAL OF NATIONAL GRASSLANDS FROM NATIONAL FOREST SYSTEM.

Section 11(a) of the Forest and Rangeland Renewable Resource Planning Act of 1974 (16 U.S.C. 1609(a)) is amended by striking the phrase "the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act (50 Stat. 525; 7 U.S.C. 1010–1012)".

SEC. 205. MANAGEMENT OF NATIONAL GRASSLANDS.

(a) IN GENERAL.—The Secretary, acting through the Chief of the Forest Service, shall manage the National Grasslands as a separate entity in accordance with this title and the provisions and multiple use purposes of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1012).

(b) CONSULTATION.—The Secretary shall provide timely opportunities for consultation and cooperation with interested State and local governmental entities and others in the development and implementation of land use policies and plans, and land conservation programs for the National Grasslands.

(c) GRAZING ACTIVITIES.—In furtherance of the purpose of this title, the Secretary shall administer grazing permits and implement grazing management decisions in consultation, cooperation, and coordination with local grazing associations and other grazing permit holders.

(d) REGULATIONS.—The Secretary shall promulgate regulations to manage and protect the National Grasslands, taking into account

the unique characteristics of the National Grasslands and grasslands agriculture conducted under the Bankhead-Jones Farm Tenant Act. Such regulations shall facilitate the efficient administration of grazing and provide protection for environmental values, including but not limited to wildlife and wildlife habitat, and Federal lands equivalent to that on units of the National Forest System.

(e) CONFORMING AMENDMENT TO BANKHEAD-JONES ACT.—Section 31 of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010) is amended to read as follows:

"To accomplish the purposes of title III of this Act, the Secretary is authorized and directed to develop a separate program of land conservation and utilization for the National Grasslands, in order thereby to correct maladjustments in land use, and thus assist in promoting grassland agriculture and secure occupancy and economic stability of farms and ranches, controlling soil erosion, reforestation, preserving and protecting natural resources, protecting fish and wildlife and their habitat, developing and protecting recreational opportunities and facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or commercial enterprises.".

(f) HUNTING, FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities on National Grasslands in accordance with applicable Federal and State laws, nor shall appropriate recreational activities be limited or precluded.

(g) VALID EXISTING RIGHTS.—Nothing in this title shall affect valid existing rights, reservations, agreements, or authorizations. Section 1323(a) of Public Law 96-487 shall continue to apply to non-Federal lands and interests therein within the boundaries of the National Grasslands.

(h) FEES AND CHARGES.—Fees and charges for livestock grazing on the National Grasslands shall be determined in accordance with section 115 of this Act, except that the Secretary may adjust the grazing fee to compensate for approved conservation practice expenditures.

PRESSLER AMENDMENT NO. 3560

Mr. PRESSLER proposed an amendment to amendment No. 3555 proposed by Mr. DOMENICI to the bill (S. 1459) to provide for uniform management of livestock grazing on Federal land, and for other purposes; as follows:

In section 202(a)(3), after "preserving" insert "sporting,".

In section 202(b), strike "hunting, fishing, and recreational activities" and insert "sportsmen's hunting and fishing and other recreational activities".

In section 205(f), strike "HUNTING, FISHING, AND RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding hunting or fishing activities" and insert "SPORTSMEN'S HUNTING AND FISHING AND OTHER RECREATIONAL ACTIVITIES.—Nothing in this title shall be construed as limiting or precluding sportsmen's hunting or fishing activities".

THE PRESIDIO PROPERTIES ADMINISTRATION ACT OF 1996

MURKOWSKI AMENDMENT NO. 3561

(Ordered to lie on the table.)

Mr. MURKOWSKI submitted an amendment intended to be proposed by him to the bill (H.R. 1296) to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer; as follows:

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

TITLE I—THE PRESIDIO OF SAN FRANCISCO

SECTION 101. FINDINGS.

The Congress finds that—

(1) the Presidio, located amidst the incomparable scenic splendor of the Golden Gate, is one of America's great natural and historic sites;

(2) the Presidio is the oldest continuously operated military post in the Nation dating from 1776, and was designated a National Historic Landmark in 1962;

(3) preservation of the cultural and historic integrity of the Presidio for public use recognizes its significant role in the history of the United States;

(4) the Presidio, in its entirety, is a part of the Golden Gate National Recreation Area, in accordance with Public Law 92-589;

(5) as part of the Golden Gate National Recreation Area, the Presidio's significant natural, historic, scenic, cultural, and recreational resources must be managed in a manner which is consistent with sound principles of land use planning and management, and which protects the Presidio from development and uses which would destroy the scenic beauty and historic and natural character of the area and cultural and recreational resources;

(6) removal and/or replacement of some structures within the Presidio must be considered as a management option in the administration of the Presidio; and

(7) the Presidio will be managed through an innovative public/private partnership that minimizes cost to the United States Treasury and makes efficient use of private sector resources.

SECTION 102. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF THE INTERIOR.

(a) INTERIM AUTHORITY.—the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") is authorized to manage leases in existence on the date of this Act for properties under the administrative jurisdiction of the Secretary and located at the Presidio. Upon the expiration of any such lease, the Secretary may extend such lease for a period terminating not later than 6 months after the first meeting of the Presidio Trust. The Secretary may not enter into any new leases for property at the Presidio to be transferred to the Presidio Trust under this Title, however, the Secretary is authorized to enter into agreements for use and occupancy of the Presidio properties which are assignable to the Trust and are terminable within 30 days notice by the Trust. Prior to the transfer of administrative jurisdiction over any property to the Presidio Trust, and notwithstanding section 1341 of title 31 of the United States Code, the proceeds from any such lease shall be retained by the Secretary and such proceeds shall be available, without further appropriation, for the preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties. The Secretary may adjust the rental charge on any such lease for any amounts to be expended by the lessee for preservation, maintenance, restoration, improvement, repair and related expenses with respect to properties and infrastructure within the Presidio.

(b) PUBLIC INFORMATION AND INTERPRETATION.—The Secretary shall be responsible, in cooperation with the Presidio Trust, for providing public interpretive services, visitor orientation and educational programs on all lands within the Presidio.

(c) OTHER.—Those lands and facilities within the Presidio that are not transferred to the administrative jurisdiction of the Presidio Trust shall continue to be managed by the Secretary. The Secretary and the Presidio Trust shall cooperate to ensure adequate public access to all portions of the Presidio. Any infrastructure and building improvement projects that were funded prior to the enactment of this Act shall be completed by the National Park Service.

(d) PARK SERVICE EMPLOYEES.—(1) Any career employee of the National Park Service, employed at the Presidio at the time of the transfer of lands and facilities to the Presidio Trust, shall not be separated from the Service by reason of such transfer, unless such employee is employed by the Trust, other than on detail. The Trust shall have sole discretion over whether to hire any such employee or request a detail of such employee.

(2) Any career employee of the National Park Service employed at the Presidio on the date of enactment of this Title shall be given priority placement for any available position within the National Park System notwithstanding any priority reemployment lists, directives, rules, regulations or other orders from the Department of the Interior, the Office of Management and Budget, or other federal agencies.

SECTION 103. ESTABLISHMENT OF THE PRESIDIO TRUST.

(a) ESTABLISHMENT.—There is established a wholly owned government corporation to be known as the Presidio Trust (hereinafter in this Title referred to as the "Trust").

(b) TRANSFER.—(1) Within 60 days after receipt of a request from the Trust for the transfer of any parcel within the area depicted as Area B on the map entitled "Presidio Trust Number 1," dated December 7, 1995, the Secretary shall transfer such parcel to the administrative jurisdiction of the Trust. Within one year after the first meeting of the Board of Directors of the Trust, the Secretary shall transfer to the Trust administrative jurisdiction over all remaining parcels within Area B. Such map shall be on file and available for public inspection in the offices of the Trust and in the offices of the National Park Service, Department of the Interior. The Trust and the Secretary may jointly make technical and clerical revisions in the boundary depicted on such map. The Secretary shall retain jurisdiction over those portions of the building identified as number 102 as the Secretary deems essential for use as a visitor center. The Building shall be named the "William Penn Mott Visitor Center". Any parcel of land, the jurisdiction over which is transferred pursuant to this subsection, shall remain within the boundary of the Golden Gate National Recreation Area. With the consent of the Secretary, the Trust may at any time transfer to the administrative jurisdiction of the Secretary any other properties within the Presidio

which are surplus to the needs of the Trust and which serve essential purposes of the Golden Gate National Recreation Area. The Trust is encouraged to transfer to the administrative jurisdiction of the Secretary open space areas which have high public use potential and are contiguous to other lands administrated by the Secretary.

(2) Within 60 days after the first meeting of the Board of Directors of the Trust, the Trust and the Secretary shall determine cooperatively which records, equipment, and other personal property are deemed to be necessary for the immediate administration of the properties to be transferred, and the Secretary shall immediately transfer such personal property to the Trust. Within one year after the first meeting of the Board of Directors of the Trust, the Trust and the Secretary shall determine cooperatively what, if any, additional records, equipment, and other personal property used by the Secretary in the administration of the properties to be transferred should be transferred to the Trust.

(3) The Secretary shall transfer, with the transfer of administrative jurisdiction over any property, the unobligated balance of all funds appropriated to the Secretary, all leases, concessions, licenses, permits, and other agreements affecting such property.

(4) At the request of the Trust, the Secretary shall provide funds to the Trust for preparation of such plan, hiring of initial staff and other activities deemed by the Trust as essential to the establishment of the Trust prior to the transfer of properties to the Trust.

(c) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The powers and management of the Trust shall be vested in a Board of Directors (hereinafter referred to as the "Board") consisting of the following 7 members:

(A) the Secretary of the Interior or the Secretary's designee; and

(B) six individuals, who are not employees of the federal Government, appointed by the President, who shall possess extensive knowledge and experience in one or more of the fields of city planning, finance, real estate development, and resource conservation. At least one of these individuals shall be a veteran of the Armed Services. At least 3 of these individuals shall reside in the San Francisco Bay Area. The President shall make the appointments referred to in this subparagraph within 90 days after the enactment of this Act and shall ensure that the fields of city planning, finance, real estate development, and resource conservation are adequately represented. Upon establishment of the Trust, the Chairman of the Board of Directors of the Trust shall meet with the Chairman of the Energy and Natural Resources Committee of the United States Senate and the Chairman of the Resources Committee of the United States House of Representatives.

(2) TERMS.—Members of the Board appointed under paragraph (1)(B) shall each serve for a term of 4 years, except that of the members first appointed, 3 shall serve for a term of 2 years. Any vacancy in the Board shall be filled in the same manner in which the original appointment was made, and any member appointed to fill a vacancy shall serve for the remainder of the term for which his or her predecessor was appointed. No appointed member may serve more than 8 years in consecutive terms.

(3) QUORUM.—Four members of the Board shall constitute a quorum for the conduct of business by the Board.

(4) ORGANIZATION AND COMPENSATION.—The Board shall organize itself in such a manner as it deems most appropriate to effectively carry out the authorized activities of the Trust. Board members shall serve without pay, but may be reimbursed for the actual and necessary travel and subsistence expenses incurred by them in the performance of the duties of the Trust.

(5) LIABILITY OF DIRECTORS.—Members of the Board of Directors shall not be considered federal employees by virtue of their membership on the Board, except for purposes of the Federal Tort Claims Act and the Ethics in Government Act, and the provisions of chapter 11 of title 18, United States Code.

(6) MEETINGS.—The Board shall meet at least three times per year in San Francisco and at least two of those meetings shall be open to the public. Upon a majority vote, the Board may close any other meetings to the public. The Board shall establish procedures for providing public information and opportunities for public comment regarding policy, planning, and design issues through the Golden Gate National Recreation Area Advisory Commission.

(7) STAFF.—The Trust is authorized to appoint and fix the compensation and duties of an executive director and such other officers and employees as it deems necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay them without regard to the provisions of chapter 51, and subchapter III of chapter 53, title 5, United States Code, relating to classification and General Schedule pay rates.

(8) NECESSARY POWERS.—The Trust shall have all necessary and proper powers for the exercise of the authorities vested in it.

(9) TAXES.—The Trust and all properties administered by the Trust shall be exempt from all taxes and special assessments of every kind by the State of California, and its political subdivisions, including the City and County of San Francisco.

(10) GOVERNMENT CORPORATION.—(A) The Trust shall be treated as a wholly owned Government corporation subject to chapter 91 of title 31, United States Code (commonly referred to as the Government Corporation Control Act). Financial statements of the Trust shall be audited annually in accordance with section 9105 of title 31 of the United States Code.

(B) At the end of each calendar year, the Trust shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives a comprehensive and detailed report of its operations, activities, and accomplishments for the prior fiscal year. The report also shall include a section that describes in general terms the Trust's goals for the current fiscal year.

SECTION 104. DUTIES AND AUTHORITIES OF THE TRUST.

(a) OVERALL REQUIREMENTS OF THE TRUST.—The Trust shall manage the leasing, maintenance, rehabilitation, repair and improvement of property within the Presidio under its administrative jurisdiction using the authorities provided in this section, which shall be exercised in accordance with the purposes set forth in section 1 of the Act entitled "An Act to establish the Golden Gate National Recreation Area in the State of California, and for other purposes," approved October 27, 1972 (Public Law 92-589; 86 Stat. 1299; 16 U.S.C. 460bb), and in accordance with the general objectives of the General Management Plan (hereinafter referred to as the "management plan") approved for the Presidio.

(b) The Trust may participate in the development of programs and activities at the properties transferred to the Trust. The Trust shall have the authority to negotiate and enter into such agreements, leases, contracts and other arrangements with any person, firm, association, organization, corporation or governmental entity, including, without limitation, entities of federal, State and local governments as are necessary and appropriate to finance and carry out its authorized activities. Any such agreement may be entered into without regard to section 321 of the Act of June 30, 1932 (40 U.S.C. 303b). The Trust shall establish procedures for lease agreements and other agreements for use and occupancy of Presidio facilities, including a requirement that in entering into such agreements the Trust shall obtain reasonable competition. The Trust may not dispose of or convey fee title to any real property transferred to it under this Title. Federal laws and regulations governing procurement by Federal agencies shall not apply to the Trust. The Trust, in consultation with the Administrator of Federal Procurement Policy, shall establish and promulgate procedures applicable to the Trust's procurement of goods and services including, but not limited to, the award of contracts on the basis of contractor qualifications, price, commercially reasonable buying practices, and reasonable competition. Such procedures shall conform to laws and regulations related to federal government contracts governing working conditions and wage scales, including the provisions of 40 U.S.C. Sec. 276a-276a6 (Davis-Bacon Act).

(c) The Trust shall develop a comprehensive program for management of those lands and facilities within the Presidio which are transferred to the administrative jurisdiction of the Trust. Such program shall be designed to reduce expenditures by the National Park Service and increase revenues to the federal government to the maximum extent possible. In carrying out this program, the Trust shall be treated as a successor in interest to the National Park Service with respect to compliance with the National Environmental Policy Act and other environmental compliance statutes. Such program shall consist of—

(1) demolition of structures which in the opinion of the Trust, cannot be cost-effectively rehabilitated, and which are identified in the management plan for demolition,

(2) evaluation for possible demolition or replacement those buildings identified as categories 2 through 5 in the Presidio of San Francisco Historic Landmark District Historic American Buildings Survey Report, dated 1985,

(3) new construction limited to replacement of existing structures of similar size in existing areas of development, and

(4) examination of a full range of reasonable options for carrying out routine administrative and facility management programs.

The Trust shall consult with the Secretary in the preparation of this program.

(d) To augment or encourage the use of non-federal funds to finance capital improvements on Presidio properties transferred to its jurisdiction, the Trust, in addition to its other authorities, shall have the following authorities subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.):

(1) The authority to guarantee any lender against loss of principal or interest on any loan, provided that (A) the terms of the

guarantee are approved by the Secretary of the Treasury, (B) adequate subsidy budget authority is provided in advance in appropriations acts, and (C) such guarantees are structured so as to minimize potential cost to the federal Government. No loan guarantee under this Title shall cover more than 75 percent of the unpaid balance of the loan. The Trust may collect a fee sufficient to cover its costs in connection with each loan guaranteed under this Act. The authority to enter into any such loan guarantee agreement shall expire at the end of 15 years after the date of enactment of this Title.

(2) The authority, subject to appropriations, to make loans to the occupants of property managed by the Trust for the preservation, restoration, maintenance, or repair of such property.

(3) The authority to issue obligations to the Secretary of the Treasury, but only if the Secretary of the Treasury agrees to purchase such obligations after determining that the projects to be funded from the proceeds thereof are credit worthy and that a repayment schedule is established and only to the extent authorized in advance in appropriations acts. The Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such notes or obligations acquired by the Secretary of the Treasury under this subsection. Obligations issued under this subparagraph shall be in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury, and shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. No funds appropriated to the Trust may be used for repayment of principal or interest on, or redemption of, obligations issued under this paragraph.

(4) The aggregate amount of obligations issued under this subsection which are outstanding at any one time may not exceed $50,000,000.

(e) The Trust may solicit and accept donations of funds, property, supplies, or services from individuals, foundations, corporations, and other private or public entities for the purpose of carrying out its duties. The Trust shall maintain a liaison with the Golden Gate National Park Association.

(f) Notwithstanding section 1341 of title 31 of the United States Code, all proceeds received by the Trust shall be retained by the Trust, and such proceeds shall be available, without further appropriation, for the administration, preservation, restoration, operation and maintenance, improvement, repair and related expenses incurred with respect to Presidio properties under its administrative jurisdiction. Upon the Request of the Trust, the Secretary of the Treasury shall invest excess moneys of the Trust in public debt securities with maturities suitable to the needs of the Trust.

(g) The Trust may sue and be sued in its own name to the same extent as the federal government. Litigation arising out of the activities of the Trust shall be conducted by the Attorney General; except that the Trust may retain private attorneys to provide advice and counsel. The District Court for the Northern District of California shall have exclusive jurisdiction over any suit filed against the Trust.

(h) The Trust shall enter into a Memorandum of Agreement with the Secretary, acting through the Chief of the United States Park Police, for the conduct of law enforcement activities and services within the those portions of the Presidio transferred to the administrative jurisdiction of the Trust.

(i) The Trust may adopt, amend, repeal and enforce bylaws, rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised. The Trust is authorized, in consultation with the Secretary, to adopt and to enforce those rules and regulations that are applicable to the Golden Gate National Recreation Area and that may be necessary and appropriate to carry out its duties and responsibilities under this Title. The Trust shall give notice of the adoption of such rules and regulations by publication in the Federal Register.

(j) For the purpose of compliance with applicable laws and regulations concerning properties transferred to the Trust by the Secretary, the Trust shall negotiate directly with regulatory authorities.

(k) INSURANCE.—The Trust shall require that all leaseholders and contractors procure proper insurance against any loss in connection with properties under lease or contract, or the authorized activities granted in such lease or contract, as is reasonable and customary.

(l) BUILDING CODE COMPLIANCE.—The Trust shall bring all properties under its administrative jurisdiction into compliance with federal building codes and regulations appropriate to use and occupancy within 10 years after the enactment of this Title to the extent practicable.

(m) LEASING.—In managing and leasing the properties transferred to it, the Trust consider the extent to which prospective tenants contribute to the implementation of the General Management Plan for the Presidio and to the reduction of cost to the Federal Government. The Trust shall give priority to the following categories of tenants: tenants that enhance the financial viability of the Presidio and tenant that facilitate the cost-effective preservation of historic buildings through their reuse of such buildings.

(n) REVERSION.—If, at the expiration of 15 years, the Trust has not accomplished the goals and objectives of the plan required in section (105)(b) of this Title, then all property under the administrative jurisdiction of the Trust pursuant to section (103)(b) of this Title shall be transferred to the Administrator of the General Services Administration to be disposed of in accordance with the procedures outlined in the Defense Authorization Act of 1990 (104 Stat. 1809), and any real property so transferred shall be deleted from the boundary of the Golden Gate National Recreation Area. In the event of such transfer, the terms and conditions of all agreements and loans regarding such lands and facilities entered into by the Trust shall be binding on any successor in interest.

SECTION 105. LIMITATIONS ON FUNDING.

(a)(1) From amounts made available to the Secretary for the operation of areas within the Golden Gate National Recreation Area, not more than $25,000,000 shall be available to carry out this Title in each fiscal year after the enactment of this Title until the plan is submitted under subsection (b). Such sums shall remain available until expended.

(2) After the plan required in subsection (b) is submitted, and for each of the 14 fiscal years thereafter, there are authorized to be appropriated to the Trust not more than the amounts specified in such plan. Such sums shall remain available until expended. Of such sums, not more than $3 million annually shall be available through the Trust for law enforcement activities and services to be provided by the United States Park Police at the Presidio in accordance with section 104(h) of this Title.

(b) Within one year after the first meeting of the Board of Directors of the Trust, the Trust shall submit to Congress a plan which includes a schedule of annual decreasing federally appropriated funding that will achieve, at a minimum, self-sufficiency for the Trust within 15 complete fiscal years after such meeting of the Trust.

(c) The Administrator of the General Services Administration shall provide necessary assistance to the Trust in the formulation and submission of the annual budget request for the administration, operation, and maintenance of the Presidio.

SECTION 106. GENERAL ACCOUNTING OFFICE STUDY.

(a) Three years after the first meeting of the Board of Directors of the Trust, the General Accounting Office shall conduct an interim study of the activities of the Trust and shall report the results of the study to the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate, and the Committee on Resources and Committee on Appropriations of the House of Representatives. The study shall include, but shall not be limited to, details of how the Trust is meeting its obligations under this Title.

(b) In consultation with the Trust, the General Accounting Office shall develop an interim schedule and plan to reduce and replace the federal appropriations to the extent practicable for interpretive services conducted by the National Park Service, and law enforcement activities and services, fire and public safety programs conducted by the Trust.

(c) Seven years after the first meeting of the Board of Directors of the Trust, the General Accounting Office shall conduct a comprehensive study of the activities of the Trust, including the Trust's progress in meeting its obligations under this Title, taking into consideration the results of the study described in subsection (a) and the implementation of plan and schedule required in subsection (b). The General Accounting Office shall report the results of the study, including any adjustments to the plan and schedule, to the Committee on Energy and Natural Resources and the Committee on Appropriations of the United States Senate, and the Committee on Resources and Committee on Appropriations of the House of Representatives.

TITLE II—MINOR BOUNDARY ADJUSTMENTS AND MISCELLANEOUS PARK AMENDMENTS

SECTION 201. YUCCA HOUSE NATIONAL MONUMENT BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—The boundaries of Yucca House National Monument are revised to include the approximately 24.27 acres of land generally depicted on the map entitled "Boundary—Yucca House National Monument, Colorado", numbered 318/80,001–B, and dated February 1990.

(b) MAP.—The map referred to in subsection (a) shall be one file and available for public inspection in appropriate offices of the National Park Service of the Department of the Interior.

(c) ACQUISITION.—

(1) IN GENERAL.—Within the lands described in subsection (a), the Secretary of the Interior may acquire lands and interests in lands by donation.

(2) The Secretary of the Interior may pay administrative costs arising out of any donation described in paragraph (1) with appropriated funds.

SECTION 202. ZION NATIONAL PARK BOUNDARY ADJUSTMENT.

(a) ACQUISITION AND BOUNDARY CHANGE.—The Secretary of the Interior is authorized to acquire by exchange approximately 5.48 acres located in the SW¼ of Section 28, Township 41 South, Range 10 West, Salt Lake Base and Meridian. In exchange therefor the Secretary is authorized to convey all right, title, and interest of the United States in and to approximately 5.51 acres in Lot 2 of Section 5, Township 41 South, Range 11 West, both parcels of land being in Washington County, Utah. Upon completion of such exchange, the Secretary is authorized to revise the boundary of Zion National Park to add the 5.48 acres in section 28 to the park and to exclude the 5.51 acres in section 5 from the park. Land added to the park shall be administered as part of the park in accordance with the laws and regulations applicable thereto.

(b) EXPIRATION.—The authority granted by this section shall expire two years after the date of the enactment of this Title.

SECTION 203. PICTURED ROCKS NATIONAL LAKESHORE BOUNDARY ADJUSTMENT.

The boundary of Pictured Rocks National Lakeshore is hereby modified as depicted on the a entitled "Area Proposed for Addition to Pictured Rocks National Lakeshore," numbered 625–80, 043A, and dated July 1992.

SECTION 204. INDEPENDENCE NATIONAL HISTORICAL PARK BOUNDARY ADJUSTMENT.

The administrative boundary between Independence National Historical Park and the United States Customs House along the Moravian Street Walkway in Philadelphia, Pennsylvania, is hereby modified as generally depicted on the drawing entitled "Exhibit 1, Independence National Park, Boundary Adjustment", and dated May 1987, which shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The Secretary of the Interior is authorized to accept and transfer jurisdiction over property in accord with such administrative boundary, as modified by this section.

SECTION 205. CRATERS OF THE MOON NATIONAL MONUMENT BOUNDARY ADJUSTMENT.

(a) BOUNDARY REVISION.—The boundary of Craters of the National Monument, Idaho, is revised to add approximately 210 acres and to delete approximately 315 acres as generally depicted on the map entitled "Craters of the Moon National Monument, Idaho, Proposed 1987 Boundary Adjustment", numbered 131–80,008, and dated October 1987, which map shall be on file and available for public inspection in the office of the National Park Service, Department of the Interior.

(b) ADMINISTRATION AND ACQUISITION.—Federal lands and interests therein deleted from the boundary of the national monument by this section shall be administered by the Secretary of the Interior through the Bureau of Land Management in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and Federal lands and interests therein added to the national monument by this section shall be administered by the Secretary as part of the national monument, subject to the laws and regulations applicable thereto. The Secretary is authorized to acquire private lands and interests therein within the boundary of the national monument by donation, purchase with donated or appropriated funds, or exchange, and when acquired they shall be administered by the Secretary as part of the national monument, subject to the laws and regulations applicable thereto.

SECTION 206. HAGERMAN FOSSIL BEDS NATIONAL MONUMENT BOUNDARY ADJUSTMENT.

Section 302 of the Arizona-Idaho Conservation Act of 1988 (102 Stat. 4576) is amended by adding the following new subsection:

"(d) To further the purposes of the monument, the Secretary is also authorized to acquire from willing sellers only, by donation, purchase with donated or appropriated funds, or exchange not to exceed 65 acres outside the boundary depicted on the map referred to in section 301 and develop and operate thereon research, information, interpretive, and administrative facilities. Lands acquired and facilities developed pursuant to this subsection shall be administered by the Secretary as part of the monument. The boundary of the monument shall be modified to include the lands added under this subsection as a noncontiguous parcel.".

SECTION 207. WUPATKI NATIONAL MONUMENT BOUNDARY ADJUSTMENT.

The boundary of the Wupatki National Monument, Arizona, is hereby revised to include the lands and interests in lands within the area generally depicted as "Proposed Addition 168.89 Acres" on the map entitled "Boundary—Wupatki and Sunset Crater National Monuments, Arizona", numbered 322–80,021, and dated April 1989. The map shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. Subject to valid existing rights, Federal lands and interests therein within the area added to the monument by this section are hereby transferred without monetary consideration or reimbursement to the administrative jurisdiction of the National Park Service, to be administered as part of the monument in accordance with the laws and regulations applicable thereto.

SECTION 208. NEW RIVER GORGE NATIONAL RIVER.

Section 1101 of the National Parks and Recreation Act of 1978 (16 U.S.C. 460m–15) is amended by striking out "NERI–80,023, dated January 1987" and inserting "NERI–80,028, dated January 1993".

SECTION 209. GAULEY RIVER NATIONAL RECREATION AREA.

(a) Section 201(b) of the West Virginia National Interest River Conservation Act of 1987 (16 U.S.C. 460ww(b)) is amended by striking out "NRA–GR/20,000A and dated July 1987" and inserting "GARI–80,001 and dated January 1993".

(b) Section 205(c) of the West Virginia National Interest River Conservation Act of 1987 (16 U.S.C. 460ww–4(c) is amended by adding the following at the end thereof; "If project construction is not commenced within the time required in such license, or if such license is surrendered at any time, such boundary modification shall cease to have any force and effect.".

SECTION 210. BLUESTONE NATIONAL SCENIC RIVER.

Section 3(a)(65) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(65) is amended by striking out "WSR–BLU/20,000, and dated January 1987" and inserting "BLUE–80,004, and dated January 1993".

SECTION 211. ADVISORY COMMISSIONS.

(a) KALOKO-HONOKOHAU NATIONAL HISTORICAL PARK.—(1) This subsection under this Title may be cited as the "Na Hoa Pili Kaloko-Honokohau Re-establishment Act of 1995".

(2) Notwithstanding section 505(f)(7) of Public Law 95–625 (16 U.S.C. 396d(7)), the Na Hoa Pili O Kaloko-Honokohau, the Advisory Commission for Kaloko-Honokohau National Historical Park, is hereby re-established in accordance with section 505(f), as amended by paragraph (3) of this section.

(3) Section 505(f)(7) of Public Law 95–625 (16 U.S.C. 396d(7)), is amended by striking "this Act" and inserting in lieu thereof, "the Na Hoa Pili Kaloko-Honokohau Re-establishment Act of 1995".

(b) WOMEN'S RIGHTS NATIONAL HISTORICAL PARK.—(1) This subsection under this Title may be cited as the "Women's Rights National Historical Park Advisory Commission Re-establishment Act of 1995."

(2) Not withstanding section 1601(h)(5) of Public Law 96–607 (16 U.S.C. 410ll(h)(5)), the advisory commission for Women's Rights National Historical Park is hereby re-established in accordance with section 1601(h), as amended by paragraph (3) of this section.

(3) Section 1601(h)(5) of Public Law 96–607 (16 U.S.C. 410ll(h)(5)), is amended by striking "this section" and inserting in lieu thereof, "the Women's Rights National Historical Park Advisory Commission Re-establishment Act of 1995".

SECTION 212. AMENDMENT TO BOSTON NATIONAL HISTORIC PARK ACT.

Section 3(b) of the Boston National Historical Park Act of 1974 (16 U.S.C. 410z–1(b)) is amended by inserting "(1)" before the first sentence thereof and by adding the following at the end thereof:

"(2) The Secretary of the Interior is authorized to enter into a cooperative agreement with the Boston Public Library to provide for the distribution of informational and interpretive materials relating to the park and to the Freedom Trail.".

SECTION 213. CUMBERLAND GAP NATIONAL HISTORICAL PARK.

(a) REMOVAL OF RESTRICTIONS.—The first section of the Act of June 11, 1940, entitled "An Act to provide for the establishment of the Cumberland Gap National Historical Park in Tennessee, Kentucky, and Virginia: (54 Stat. 262, 16 U.S.C. 261 et seq.) is amended by striking out everything after the words "Cumberland Gap National Historical Park" and inserting a period.

(b) USE OF APPROPRIATED FUNDS.—Section 3 of such Act (16 U.S.C. 263) is amended by inserting "or with funds that may be from time to time appropriated for the purpose," after "funds".

SECTION 214. WILLIAM O. DOUGLAS OUTDOOR CLASSROOM.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the National Park Service, is authorized to enter into cooperative agreements, as specified as subsection (b), relating to Santa Monica Mountains National Recreation Area (hereafter in this Title referred to as "recreation area") in accordance with this section.

(b) COOPERATIVE AGREEMENTS.—The cooperative agreements referred to in subsection (a) are as follows:

(1) A cooperative agreement with appropriate organizations or groups in order to promote education concerning the natural and cultural resources of the recreation area and lands adjacent thereto. Any agreement entered into pursuant to this paragraph—

(A) may provide for Federal matching grants of not more than 50 percent of the total cost of providing a program of such education;

(B) shall provide for visits by students or other beneficiaries to federally owned lands within the recreation area;

(C) shall limit the responsibility of the Secretary to providing interpretation services concerning the natural and cultural resources of the recreation area; and

(D) shall provide that the non-Federal party shall be responsible for any cost of carrying out the agreement other than the cost of providing interpretation services under subparagraph (C).

(2) A cooperative agreement under which—

(A) the Secretary agrees to maintain the facilities at 2600 Franklin Canyon Drive in Beverly Hills, California, for a period of 8 fiscal years beginning with the first fiscal year for which funds are appropriated pursuant to this section, and to provide funding for programs of the William O. Douglas Outdoor Classroom or its successors in interest that utilize those facilities during such period; and in return; or

(B) the William O. Douglas Outdoor Classroom, for itself and any successors in interest with respect to such facilities, agrees that at the end of the term of such agreement all right, title, and interest in and to such facilities will be donated to the United States for addition and operation as part of the recreation area.

(c) EXPENDITURE OF FUNDS.—Federal funds may be expended on non-Federal property located within the recreation area pursuant to the cooperative agreement described in subsection (b)(2).

(d) LIMITATIONS.—(1) The Secretary may not enter into the cooperative agreement described in subsection (b)(2) unless and until the Secretary determines that acquisition of the facilities described in such subsection would further the purposes of the recreation area.

(2) This section shall not be construed as authorizing an agreement by the Secretary for reimbursement of expenses incurred by the William O. Douglas Outdoor Classroom or any successor in interest that are not directly related to the use of such facilities for environmental education and interpretation of the resources and values of the recreation area and associated lands and resources.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the 8-year period beginning October 1, 1995, not to exceed $2,000,000 to carry out this section.

SECTION 215. MISCELLANEOUS PROVISIONS.

(a) NEW RIVER CONFORMING AMENDMENTS.—Title XI of the National Parks and Recreation Act of 1978 (16 U.S.C. 460m–15, et seq.) is amended by adding the following new section at the end thereof:

"SEC. 1117. APPLICABLE PROVISIONS OF OTHER LAW.

(a) COOPERATIVE AGREEMENTS.—The provisions of section 202(e)(1) of the West Virginia National Interest River Conservation Act of 1987 (16 U.S.C. 460ww–1(e)(1)) shall apply to the New River Gorge National River in the same manner and to the same extent as such provisions apply to the Gauley River National Recreation Area.

(b) REMNANTS OF LANDS.—The provisions of the second sentence of section 203(a) of the West Virginia National Interest River Conservation Act of 1987 (16 U.S.C. 460ww–2(a)) shall apply to tracts of land partially within the boundaries of the New River Gorge National River in the same manner and to the same extent as such provisions apply to the tracts of land only partially within the Gualey River National Recreation Area.".

(b) BLUESTONE RIVER CONFORMING AMENDMENTS.—Section 3(a) (65) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(65)) is amended by striking "leases" in the fifth sentence and inserting in lieu thereof "the lease" and in the seventh sentence by striking "such management may be continued pursuant to renewal of such lease agreement. If requested to do so by the State of West Virginia, the Secretary may not terminate such leases and assume administrative authority over the areas concerned." and inserting in lieu thereof the following" "if the State of West Virginia so requests, the Secretary shall renew such lease agreement with the same terms and conditions as contained in such lease agreement on the date of enactment of this paragraph under which the State management shall be continued pursuant to such renewal. If requested to do so by the State or West Virginia, or as provided in such lease agreement, the Secretary may terminate or modify the lease and assume administrative authority over all or part of the areas concerned.".

SECTION 216. GAULEY ACCESS.

Section 202(e) of the West Virginia National Interest River Conservation Act of 1987 (16 U.S.C. 460ww–1(e) is amended by adding the following new paragraph at the end thereof:

"(4) ACCESS TO THE RIVER.—Within 90 days after the date of enactment of this subsection, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate setting forth a plan to provide river access for non-commercial recreational users within the Gauley River National Recreation Area. The plan shall provide that such access shall utilize existing public roads and rights-of-way to the maximum extent feasible and shall be limited to providing access for such non-commercial users.".

SECTION 217. VISITOR CENTER.

The Secretary of the Interior is authorized to construct a visitor center and such other related facilities as may be deemed necessary to facilitate visitor understanding and enjoyment of the New River Gorge National River and the Gauley River National Recreation Area in the vicinity of the confluence of the New and Gauley Rivers. Such center and related facilities are authorized to be constructed at a site outside of the boundary of the New River Gorge National River or Gauley River National Recreation Area unless a suitable site is available within the boundaries of either unit.

SECTION 218. EXTENSION.

For a 5-year period following the date of enactment of this Act, the provisions of the Wild and Scenic Rivers Act applicable to river segments designated for study for potential addition to the wild and scenic rivers system under subsection 5(b) of that Act shall apply to those segments of the Bluestone and Meadow Rivers which were found eligible in the studies completed by the National Park Service in August 1983 but which were not designated by the West Virginia National Interest River Conservation Act of 1987 as part of the Bluestone National Scenic River or as part of the Gauley National Recreation Area, as the case may be.

SECTION 219. BLUESTONE RIVER PUBLIC ACCESS.

Section 3(a)(65) of the Wild and Scenic Rivers Act (16 U.S.C. 1271 and following) is amended by adding the following at the end thereof: "In order to provide reasonable public access and vehicle parking for public use and enjoyment of the river designated by this paragraph, consistent with the preservation and enhancement of the natural and scenic values of such river, the Secretary may, with the consent of the owner thereof, negotiate a memorandum of understanding or cooperative agreement, or acquire lands or interests in such lands, or both, as may be necessary to allow public access to the Bluestone River and to provide, outside the boundary of the scenic river, parking and related facilities in the vicinity of the area known as Eads Mill.".

SECTION 220. LIMITATION ON PARK BUILDINGS.

The 10th undesignated paragraph (relating to a limitation on the expenditure of funds for park buildings) under the heading "MISCELLANEOUS OBJECTS, DEPARTMENT OF THE INTERIOR", which appears under the heading "UNDER THE DEPARTMENT OF THE INTERIOR", as contained in the first section of the Act of August 24, 1912 (37 Stat. 460), as amended (16 U.S.C. 451), is hereby repealed.

SECTION 221. APPROPRIATIONS FOR TRANSPORTATION OF CHILDREN.

The first section of the Act of August 7, 1946 (16 U.S.C. 17j–2), is amended by adding at the end the following:

"(j) Provide transportation for children in nearby communities to and from any unit of the National Park System used in connection with organized recreation and interpretive programs of the National Park Service.".

SECTION 222. FERAL BURROS AND HORSES.

Section 9 of the Act of December 15, 1971 (16 U.S.C. 1338a), is amended by adding at the end thereof the following: "Nothing in this Title shall be deemed to limit the authority of the Secretary in the management of units of the National Park System, and the Secretary may, without regard either to the provisions of this Title, or the provisions of section 47(a) of title 18, United States Code, use motor vehicles, fixed-wing aircraft, or helicopters, or to contract for such use, in furtherance of the management of the National Park System, and section 47(a) of title 18, United States Code, shall be applicable to such use.".

SECTION 223. AUTHORITIES OF THE SECRETARY OF THE INTERIOR RELATING TO MUSEUMS.

(a) FUNCTIONS.—The Act entitled "An Act to increase the public benefits from the National Park System by facilitating the management of museum properties relating thereto, and for other purposes" approved July 1, 1955 (16 U.S.C. 18f), is amended—

(1) in paragraph (b) of the first section, by striking out "from such donations and bequests of money"; and

(2) by adding at the end thereof the following:

"SEC. 2. ADDITIONAL FUNCTIONS.

"(a) In addition to the functions specified in the first section of this Act, the Secretary of the Interior may perform the following functions in such manner as he shall consider to be in the public interest:

"(1) Transfer museum objects and museum collections that the Secretary determines are no longer needed for museum purposes to qualified Federal agencies that have programs to preserve and interpret cultural or natural heritage, and accept the transfer of museum objects and museum collections for the purposes of this Act from any other Federal agency, without reimbursement. The head of any other Federal agency may transfer, without reimbursement, museum objects and museum collections directly to the administrative jurisdiction of the Secretary of the Interior for the purpose of this Act.

"(2) Convey museum objects and museum collections that the Secretary determines are no longer needed for museum purposes, without monetary consideration but subject to such terms and conditions as the Secretary deems necessary, to private institutions exempt from Federal taxation under

section 501(c)(3) of the Internal Revenue Code of 1986 and to non-Federal governmental entities if the Secretary determines that the recipient is dedicated to the preservation and interpretation of natural or cultural heritage and is qualified to manage the property, prior to any conveyance under this subsection.

"(3) Destroy or cause to be destroyed museum objects and museum collections that the Secretary determines to have no scientific, cultural, historic, educational, esthetic, or monetary value.

"(b) The Secretary shall ensure that museum collections are treated in a careful and deliberate manner that protects the public interest. Prior to taking any action under subsection (a), the Secretary shall establish a systematic review and approval process, including consultation with appropriate experts, that meets the highest standards of the museum profession for all actions taken under this section.".

(b) APPLICATION AND DEFINITIONS.—The Act entitled "An Act to increase the public benefits from the National Park System by facilitating the management of museum properties relating thereto, and for other purposes" approved July 1, 1955 (16 U.S.C. 18f), as amended by subsection (a), is further amended by adding the following:

"SEC. 3. APPLICATION AND DEFINITIONS.

"(a) APPLICATION.—Authorities in this Act shall be available to the Secretary of the Interior with regard to museum objects and museum collections that were under the administrative jurisdiction of the Secretary for the purposes of the National Park System before the date of enactment of this section as well as those museum objects and museum collections that may be acquired on or after such date.

"(b) DEFINITION.—For the purposes of this Act, the terms 'museum objects' and 'museum collections' mean objects that are eligible to be or are made part of a museum, library, or archive collection through a formal procedure, such as accessioning. Such objects are usually movable and include but are not limited to prehistoric and historic artifacts, works of art, books, documents, photographs, and natural history specimens.".

SECTION 224. VOLUNTEERS IN PARKS INCREASE.

Section 4 of the Volunteers in the Parks Act of 1969 (16 U.S.C. 18j.) is amended by striking out "1,000,000" and inserting in lieu thereof "$1,750,000".

SECTION 225. COOPERATIVE AGREEMENTS FOR RESEARCH PURPOSES.

Section 3 of the Act entitled "An Act to improve the administration of the National Park System by the Secretary of the Interior, and for other purposes" approved August 18, 1970 (16 U.S.C. 1a-2), is amended—

(1) in paragraph (i), by striking the period at the end and thereof and inserting in lieu thereof "; and"; and

(2) by adding at the end thereof the following:

"(j) enter into cooperative agreements with public or private educational institutions, States, and their political subdivisions, or private conservation organizations for the purpose of developing adequate, coordinated, cooperative research and training programs concerning the resources of the National Park System, and, pursuant to any such agreements, to accept from and make available to the cooperator such technical and support staff, financial assistance for mutually agreed upon research projects, supplies and equipment, facilities, and administrative services relating to cooperative research units as the Secretary deems appropriate; except that this paragraph shall not waive any requirements for research projects that are subject to the Federal procurement regulations.".

SECTION 226. CARL GARNER FEDERAL LANDS CLEANUP DAY.

The Federal Lands Cleanup Act of 1985 (Public Law 99-402; U.S.C. 169i-169i-1) is amended by striking the terms "Federal Lands Cleanup Day" or "Federal Lands National Cleanup Day" each place they occur and inserting in lieu thereof, "Carl Garner Federal Lands Cleanup Day."

SECTION 227. FORT PULASKI NATIONAL MONUMENT, GA.

Section 4 of the Act of June 26, 1936 (ch. 844; 49 Stat. 1979), is amended by striking ": *Provided*, That" and all that follows and inserting a period.

SECTION 228. LAURA C. HUDSON VISITOR CENTER.

(a) DESIGNATION.—The visitor center at Jean Lafitte National Historical Park, located at 419 Rue Decatur in New Orleans, Louisiana, is hereby designated as the "Laura C. Hudson Visitor Center."

(b) LEGAL REFERENCES.—Any reference in any law, regulation, paper, record, map, or any other document of the United States to the visitor center referred to in subsection (a) shall be deemed to be a reference to the "Laura C. Hudson Visitor Center".

SECTION 229. UNITED STATES CIVIL WAR CENTER.

(a) FINDINGS.—The Congress finds that—

(1) the sesquicentennial of the beginning of the Civil War will occur in the year 2011;

(2) the sesquicentennial will be the last significant opportunity for most Americans alive in the year 2011 to recall and commemorate the Civil War;

(3) the Civil War Center in Louisiana State University in Baton Rouge, Louisiana, has as its principal missions to create a comprehensive database that contains all Civil War materials and to facilitate the study of the Civil War from the perspectives of all ethnic cultures and all professions; academic disciplines, and occupation;

(4) the two principal missions of the Civil War Center are consistent with commemoration of the sesquicentennial;

(5) the missions of the Civil War Institute at Gettysburg College parallel those of the Civil War Center; and

(6) advance planning to facilitate the four-year commemoration of the sesquicentennial is required.

(b) DESIGNATION.—The Civil War Center, located on Raphael Semmes Drive at Louisiana State University in Baton Rouge, Louisiana, (hereinafter in this section referred to as the "center") shall be known and designated as the "United States Civil War Center".

(c) LEGAL REFERENCES.—Any reference in any law, regulation, paper, record, map, or any other document of the United States to the center referred to in subsection (b) shall be deemed to be a reference to the "United States Civil War Center".

(d) FLAGSHIP INSTITUTIONS.—The center and the Civil War Institute of Gettysburg College, located at 233 North Washington Street in Gettysburg, Pennsylvania, shall be the flagship institutions for planning the sesquicentennial commemoration of the Civil War.

TITLE III—ROBERT J. LAGOMARSINO VISITOR CENTER

SECTION 301. DESIGNATION.

The visitor center at the Channel Islands National Park, California, is designated as the "Robert J. Lagomarsino Visitor Center".

SEC. 302. LEGAL REFERENCES.

Any reference in any law, regulation, document, record, map, or other paper of the United States to the visitor center referred to in section 301 is deemed to be a reference to the "Robert J. Lagomarsino Visitor Center".

TITLE VI—ROCKY MOUNTAIN NATIONAL PARK VISITOR CENTER

SECTION 401. VISITOR CENTER.

The Secretary of the Interior is authorized to collect and expend donated funds and expend appropriated funds for the operation and maintenance of a visitor center to be constructed for visitors to and administration of Rocky Mountain National Park with private funds on lands located outside the boundary of the park.

TITLE V—CORINTH, MISSISSIPPI, BATTLEFIELD ACT

SECTION 501. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the sites located in the vicinity of Corinth, Mississippi, that were Designated as a National Historic Landmark by the Secretary of the Interior in 1991 represent nationally significant events in the Siege and Battle of Corinth during the Civil War; and

(2) the landmark sites should be preserved and interpreted for the benefit, inspiration, and education of the people of the United States.

(b) PURPOSE.—The purpose of this Title is to provide for a center for the interpretation of the Siege and Battle of Corinth and other Civil War actions in the Region and to enhance public understanding of the significance of the Corinth Campaign in the Civil War relative to the Western theater of operations, in cooperation with State or local governmental entities and private organizations and individuals.

SECTION 502. ACQUISITION OF PROPERTY AT CORINTH, MISSISSIPPI.

(a) IN GENERAL.—The Secretary of the Interior (referred to in this Title as the "Secretary") shall acquire by donation, purchase with donated or appropriated funds, or exchange, such land and interests in land in the vicinity of the Corinth Battlefield, in the State of Mississippi, as the Secretary determines to be necessary for the construction of an interpretive center to commemorate and interpret the 1862 Civil War Siege and Battle of Corinth.

(b) PUBLICLY OWNED LAND.—Land and interests in land owned by the State of Mississippi or a political subdivision of the State of Mississippi may be acquired only by donation.

SECTION 503. INTERPRETIVE CENTER AND MARKING.

(a) INTERPRETIVE CENTER.—

(1) CONSTRUCTION OF CENTER.—The Secretary shall construct, operate, and maintain on the property acquired under section 502 a center for the interpretation of the Siege and Battle of Corinth and associated historical events for the benefit of the public.

(2) DESCRIPTION.—The center shall contain approximately 5,300 square feet, and include interpretive exhibits, an auditorium, a parking area, and other features appropriate to public appreciation and understanding of the site.

(b) MARKING.—The Secretary may mark sites associated with the Siege and Battle of Corinth National Historic Landmark, as designated on May 6, 1991, if the sites are determined by the Secretary to be protected by State or local governmental agencies.

(c) ADMINISTRATION.—The land and interests in land acquired, and the facilities constructed and maintained pursuant to this

Title, shall be administered by the Secretary as a part of Shiloh National Military Park, subject to the appropriate laws (including regulations) applicable to the Park, the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (16 U.S.C. 1 et seq.), and the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461 et seq.).

SECTION 504. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there are authorized to be appropriated such sums as are necessary to carry out this Title.

(b) CONSTRUCTION.—Of the amounts made available to carry out this Title, not more than $6,000,000 may be used to carry out section 503(a).

TITLE VI—WALNUT CANYON NATIONAL MONUMENT BOUNDARY MODIFICATION

SECTION 601. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) Walnut Canyon National Monument was established for the preservation and interpretation of certain settlements and land use patterns associated with the prehistoric Sinaguan culture of northern Arizona.

(2) Major cultural resources associated with the purposes of Walnut Canyon National Monument are near the boundary and are currently managed under multiple-use objectives of the adjacent national forest. These concentrations of cultural resources, often referred to as "forts", would be more effectively managed as part of the National Park System.

(b) PURPOSE.—The purpose of this Title is to modify the boundaries of the Walnut Canyon National Monument (hereafter in this Title referred to as the "national monument") to improve management of the national monument and associated resources.

SECTION 602. BOUNDARY MODIFICATION.

Effective on the date of enactment of this Act, the boundaries of the national monument shall be modified as depicted on the map entitled "Boundary Proposal—Walnut Canyon National Monument, Coconino County, Arizona", numbered 360/80,010, and dated September 1994. Such map shall be on file and available for public inspection in the offices of the Director of the National Park Service, Department of the Interior. The Secretary of the Interior, in consultation with the Secretary of Agriculture, is authorized to make technical and clerical corrections to such map.

SECTION 603. ACQUISITION AND TRANSFER OF PROPERTY.

The Secretary of the Interior is authorized to acquire lands and interest in lands within the national monument, by donation, purchase with donated or appropriated funds, or exchange. Federal property within the boundaries of the national monument (as modified by this Title) is hereby transferred to the administrative jurisdiction of the Secretary of the Interior for management as part of the national monument. Federal property excluded from the monument pursuant to the boundary modification under section 603 is hereby transferred to the administrative jurisdiction of the Secretary of Agriculture to be managed as a part of the Coconino National Forest.

SECTION 604. ADMINISTRATION.

The Secretary of the Interior, acting through the Director of the National Park Service, shall manage the national monument in accordance with this Title and the provisions of law generally applicable to units of the National Park Service, including "An Act to establish a National Park Service, and for other purposes" approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2–4).

SECTION 605. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as may be necessary to carry out this Title.

TITLE VII—DELAWARE WATER GAP

SECTION 701. PROHIBITION OF COMMERCIAL VEHICLES.

(a) IN GENERAL.—Effective at noon on September 30, 2005, the use of Highway 209 within Delaware Water Gap National Recreation Area by commercial vehicles, when such use is not connected with the operation of the recreation area, is prohibited, except as provided in subsection (b).

(b) LOCAL BUSINESS USE PROTECTED.—Subsection (a) does not apply with respect to the use of commercial vehicles to serve businesses located within or in the vicinity of the recreation area, as determined by the Secretary.

(c) CONFORMING PROVISIONS.—

(1) Paragraphs (1) through (3) of the third undesignated paragraph under the heading "ADMINISTRATIVE PROVISIONS" in chapter VII of title I of Public Law 98–63 (97 Stat. 329) are repealed, effective September 30, 2005.

(2) Prior to noon on September 30, 2005, the Secretary shall collect and utilize a commercial use fee from commercial vehicles in accordance with paragraphs (1) through (3) of such third undesignated paragraph. Such fee shall not exceed $25 per trip.

TITLE VIII—TARGHEE NATIONAL FOREST LAND EXCHANGE

SECTION 801. AUTHORIZATION OF EXCHANGE.

(a) CONVEYANCE.—Notwithstanding the requirements in the Act entitled "An Act to Consolidate National Forest Lands", approved March 20, 1922 (16 U.S.C. 485), and section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)) that Federal and non-Federal lands exchanged for each other must be located within the same State, the Secretary of Agriculture may convey the Federal lands described in section 802(a) in exchange for the non-Federal lands described in section 802(b) in accordance with the provisions of this Title.

(b) APPLICABILITY OF OTHER PROVISIONS OF LAW.—Except as otherwise provided in this Title, the land exchange authorized by this section shall be made under the existing authorities of the Secretary.

(c) ACCEPTABILITY OF TITLE AND MANNER OF CONVEYANCE.—The Secretary shall not carry out the exchange described in subsection (a) unless the title to the non-Federal lands to be conveyed to the United States, and the form and procedures of conveyance, are acceptable to the Secretary.

SECTION 802. DESCRIPTION OF LANDS TO BE EXCHANGED.

(a) FEDERAL LANDS.—The Federal lands referred to in this Title are located in the Targhee National Forest in Idaho, are generally depicted on the map entitled "Targhee Exchange, Idaho-Wyoming—Proposed, Federal Land", dated September 1994, and are known as the North Fork Tract.

(b) NON-FEDERAL LANDS.—The non-Federal lands referred to in this Title are located in the Targhee National Forest in Wyoming, are generally depicted on the map entitled "Non-Federal land, Targhee Exchange, Idaho-Wyoming—Proposed". dated September 1994, and are known as the Squirrel Meadows Tract.

(c) MAPS.—The maps referred to in subsections (a) and (b) shall be on file and available for inspection in the office of the Targhee National Forest in Idaho and in the office of the Chief of the Forest Service.

SECTION 803. EQUALIZATION OF VALUES.

Prior to the exchange authorized by section 801, the values of the Federal and non-Federal lands to be so exchanged shall be established by appraisals of fair market value that shall be subject to approval by the Secretary. The values either shall be equal or shall be equalized using the following methods:

(1) ADJUSTMENT OF LANDS.—

(A) PORTION OF FEDERAL LANDS.—If the Federal lands are greater in value than the non-Federal lands, the Secretary shall reduce the acreage of the Federal lands until the values of the Federal lands closely approximate the values of the non-Federal lands.

(B) ADDITIONAL FEDERALLY-OWNED LANDS.—If the non-Federal lands are greater in value than the Federal lands, the Secretary may convey additional federally owned lands within the Targhee National Forest up to an amount necessary to equalize the values of the non-Federal lands and the lands to be transferred out of Federal ownership. However, such additional federally owned lands shall be limited to those meeting the criteria for land exchanges specified in the Targhee National Forest Land and Resource Management Plan.

(2) PAYMENT OF MONEY.—The values may be equalized by the payment of money as provided in section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

SECTION 804. DEFINITIONS.

For purpose of this Title:

(1) The term "Federal lands" means the Federal lands described in section 802(a).

(2) The term "non-Federal lands" means the non-Federal lands described in section 802(b).

(3) The term "Secretary" means the Secretary of Agriculture.

TITLE IX—DAYTON AVIATION

Section 201(b) of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419, approved October 16, 1992), is amended as follows:

(1) In paragraph (2), by striking "from recommendations" and inserting "after consideration of recommendations".

(2) In paragraph (4), by striking "from recommendations" and inserting "after consideration of recommendations".

(3) In paragraph (5), by striking "from recommendations" and inserting "after consideration of recommendations".

(4) In paragraph (6), by striking "from recommendations" and inserting "after consideration of recommendations".

(5) In paragraph (7), by striking "from recommendations" and inserting "after consideration of recommendations".

TITLE X—CACHE LA POUDRE

SECTION 1001. PURPOSE.

The purpose of this Title is to designate the Cache La Poudre River National Water Heritage Area within the Cache La Poudre River Basin and to provide for the interpretation, for the educational and inspirational benefit of present and future generations, of the unique and significant contributions to our national heritage of cultural and historical lands, waterways, and structures within the Area.

SECTION 1002. DEFINITIONS.

As used in this Title:

(1) AREA.—The term "Area" means the Cache La Poudre River National Water Heritage Area established by section 1003(a).

(2) COMMISSION.—The term "Commission" means the Cache La Poudre River National Water Heritage Area Commission established by section 1004(a).

(3) GOVERNOR.—The term "Governor" means the Governor of the State of Colorado.

(4) PLAN.—The term "Plan" means the water heritage area interpretation plan prepared by the Commission pursuant to section 1008(a).

(5) POLITICAL SUBDIVISION OF THE STATE.—The term "political subdivision of the State" means a political subdivision of the State of Colorado, any part of which is located in or adjacent to the Area, including a county, city, town, water conservancy district, or special district.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SECTION 1003. ESTABLISHMENT OF THE CACHE LA POUDRE RIVER NATIONAL WATER HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State of Colorado the Cache La Poudre River National Water Heritage Area.

(b) BOUNDARIES.—The boundaries of this Area shall include those lands within the 100-year flood plain of the Cache La Poudre River Basin, beginning at a point where the Cache La Poudre River flows out of the Roose velt National Forest and continuing east along said floodplain to a point one quarter of one mile west of the confluence of the Cache La Poudre River and the South Platte Rivers in Weld County, Colorado, comprising less than 35,000 acres, and generally depicted as the 100-year flood boundary on the Federal Flood Insurance maps listed below:

(1) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0146B, April 2, 1979. United States Department of Housing and Urban Development, Federal Insurance Administration.

(2) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0147B, April 2, 1979. United States Department of Housing and Urban Development, Federal Insurance Administration.

(3) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0162B, April 2, 1979. United States Department of Housing and Urban Development, Federal Insurance Administration.

(4) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0163C, March 18, 1986. Federal Emergency Management Agency, Federal Insurance Administration.

(5) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0178C, March 18, 1986. Federal Emergency Management Agency, Federal Insurance Administration.

(6) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080102 0002B, February 15, 1984. Federal Emergency Management Agency, Federal Insurance Administration.

(7) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0179C, March 18, 1986. Federal Emergency Management Agency, Federal Insurance Administration.

(8) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0193D, November 17, 1993. Federal Emergency Management Agency, Federal Insurance Administration.

(9) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0194D, November 17, 1993. Federal Emergency Management Agency, Federal Insurance Administration.

(10) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0208C, November 17, 1993. Federal Emergency Management Agency, Federal Insurance Administration.

(11) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080101 0221C, November 17, 1993. Federal Emergency Management Agency, Federal Insurance Administration.

(12) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0605D, September 27, 1991. Federal Emergency Management Agency, Federal Insurance Administration.

(13) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080264 0005A, September 27, 1991. Federal Emergency Management Agency, Federal Insurance Administration.

(14) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0608D, September 27, 1991. Federal Emergency Management Agency, Federal Insurance Administration.

(15) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0609C, September 28, 1982. Federal Emergency Management Agency, Federal Insurance Administration.

(16) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0628C, September 28, 1982. Federal Emergency Management Agency, Federal Insurance Administration.

(17) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080184 0002B, July 16, 1979. United States Department of Housing and Urban Development, Federal Insurance Administration.

(18) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0636C, September 28, 1982. Federal Emergency Management Agency, Federal Insurance Administration.

(19) FLOOD INSURANCE RATE MAP, LARIMER COUNTY, CO.—Community-Panel No. 080266 0637C, September 28, 1982. Federal Emergency Management Agency, Federal Insurance Administration.

As soon as practicable after the date of enactment of this Title, the Secretary shall publish in the Federal Register a detailed description and map of the boundaries of the Area.

(c) PUBLIC ACCESS TO MAPS.—The maps shall be on file and available for public inspection in—

(1) the offices of the Department of the Interior in Washington, District of Columbia, and Denver, Colorado; and

(2) local offices of the city of Fort Collins, Larimer Country, the city of Greeley, and Weld County.

SECTION 1004. ESTABLISHMENT OF THE CACHE LA POUDRE RIVER NATIONAL WATER HERITAGE AREA COMMISSION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the Cache La Poudre River National Water Heritage Area Commission.

(2) FUNCTION.—The Commission, in consultation with appropriate Federal, State, and local authorities, shall develop and implement an integrated plan to interpret elements of the history of water development within the Area.

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 15 members appointed not later than 6 months after the date of enactment of this Title. Of these 15 members—

(A) 1 member shall be a representative of the Secretary of the Interior which member shall be an ex officio member;

(B) 1 member shall be a representative of the Forest Service, appointed by the Secretary of Agriculture, which member shall be an ex officio member;

(C) 3 members shall be recommended by the Governor and appointed by the Secretary, of whom—

(i) 1 member shall represent the State;

(ii) 1 member shall represent Colorado State University in Fort Collins; and

(iii) 1 member shall represent the Northern Colorado Water Conservancy District;

(D) 6 members shall be representatives of local governments who are recommended by the Governor and appointed by the Secretary, of whom—

(i) 1 member shall represent the city of Fort Collins;

(ii) 2 members shall represent Larimer County, 1 of which shall represent agriculture of irrigated water interests;

(iii) 1 member shall represent the city of Greeley;

(iv) 2 members shall represent Weld County, 1 of which shall represent agricultural or irrigated water interests; and

(v) 1 member shall represent the city of Loveland; and

(E) 3 members shall be recommended by the Governor and appointed by the Secretary, and shall—

(i) represent the general public;

(ii) be citizens of the State; and

(iii) reside within the Area.

(2) CHAIRPERSON.—The chairperson of the Commission shall be elected by the members of the Commission from among members appointed under subparagraph (C), (D), or (E) of paragraph (1). The chairperson shall be elected for a 2-year term.

(3) VACANCIES.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(c) TERMS OF SERVICE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), each member of the Commission shall be appointed for a term of 3 years and may be reappointed.

(2) INITIAL MEMBERS.—The initial members of the Commission first appointed under subsection (b)(1) shall be appointed as follows:

(A) 3-YEAR TERMS.—The following initial members shall serve for a 3-year term:

(i) The representative of the Secretary of the Interior.

(ii) 1 representative of Weld County.

(iii) 1 representative of Larimer County.

(iv) 1 representative of the city of Loveland.

(v) 1 representative of the general public.

(B) 2-YEAR TERMS.—The following initial members shall serve for a 2-year term:

(i) The representative of the Forest Service.

(ii) The representative of the State.

(iii) The representative of Colorado State University.

(iv) The representative of the Northern Colorado Water Conservancy District.

(C) 1-YEAR TERMS.—The following initial members shall serve for a 1-year term:

(i) 1 representative of the city of Fort Collins.

(ii) 1 representative of Larimer County.

(iii) 1 representative of the city of Greeley.

(iv) 1 representative of Weld County.

(v) 1 representative of the general public.

(3) PARTIAL TERMS.—

(A) FILLING VACANCIES.—A member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of their term.

(B) EXTENDED SERVICE.—A member of the Commission may serve after the expiration of that member's term until a successor has taken office.

(d) COMPENSATION.—Members of the Commission shall receive no compensation for their service on the Commission.

(e) TRAVEL EXPENSES.—While away from their homes or regular places of business in the performance of services for the Commission, members shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

SECTION 1005. STAFF OF THE COMMISSION.

(a) STAFF.—The Commission shall have the power to appoint and fix the compensation of such staff as may be necessary to carry out the duties of the Commission.

(1) APPOINTMENT AND COMPENSATION.—Staff appointed by the Commission—

(A) shall be appointed without regard to the city service laws and regulations; and

(B) shall be compensated without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(b) EXPERTS AND CONSULTANTS.—Subject to such rules as may be adopted by the Commission, the Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

(c) STAFF OF OTHER AGENCIES.—

(1) FEDERAL.—Upon request of the Commission, the head of a Federal agency may detail, on a reimbursement basis, any of the personnel of the agency to the Commission to assist the Commission in carrying out the Commission's duties. The detail shall be without interruption or loss of civil service status or privilege.

(2) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of the General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(3) STATE.—The Commission may—

(A) accept the service of personnel detailed from the State, State agencies, and political subdivisions of the State; and

(B) reimburse the State, State agency, or political subdivision of the State for such services.

SECTION 1006. POWERS OF THE COMMISSION.

(a) HEARINGS.—

(1) IN GENERAL.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers necessary to carry out this Title.

(2) SUBPOENAS.—The Commission may not issue subpoenas or exercise any subpoena authority.

(b) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(c) MATCHING FUNDS.—The Commission may use its funds to obtain money from any source under a program or law requiring the recipient of the money to make a contribution in order to receive the money.

(d) GIFTS.—

(1) IN GENERAL.—Except as provided in subsection (e)(3), the Commission may, for the purpose of carrying out its duties, seek, accept, and dispose of gifts, bequests, or donations of money, personal property, or services received from any source.

(2) CHARITABLE CONTRIBUTIONS.—For the purpose of section 170(c) of the Internal Revenue Code of 1986, a gift to the Commission shall be deemed to be a gift to the United States.

(e) REAL PROPERTY.—

(1) IN GENERAL.—Except as provided in paragraph (2) and except with respect to a leasing of facilities under section 6(c)(2), the Commission may not acquire real property or an interest in real property.

(2) EXCEPTION.—Subject to paragraph (3), the Commission may acquire real property in the Area, and interests in real property in the Area—

(A) by gift or device;

(B) by purchase from a willing seller with money that was given or bequeathed to the Commission; or

(C) by exchange.

(3) CONVEYANCE TO PUBLIC AGENCIES.—Any real property or interest in real property acquired by the Commission under paragraph (2) shall be conveyed by the Commission to an appropriate non-Federal public agency, as determined by the Commission. The conveyance shall be made—

(A) as soon as practicable after acquisition;

(B) without consideration; and

(C) on the condition that the real property or interest in real property so conveyed is used in furtherance of the purpose for which the Area is established.

(f) COOPERATIVE AGREEMENTS.—For the purpose of carrying out the Plan, the Commission may enter into cooperative agreements with Federal agencies, State agencies, political subdivisions of the State, and persons. Any such cooperative agreement shall, at a minimum, establish procedures for providing notice to the Commission of any action that may affect the implementation of the Plan.

(g) ADVISORY GROUPS.—The Commission may establish such advisory groups as it considers necessary to ensure open communication with, and assistance from Federal agencies, State agencies, political subdivisions of the State, and interested persons.

(h) MODIFICATION OF PLANS.—

(1) IN GENERAL.—The Commission may modify the Plan if the Commission determines that such modification is necessary to carry out this Title.

(2) NOTICE.—No modification shall take effect until—

(A) any Federal agency, State agency, or political subdivision of the State that may be affected by the modification receives adequate notice of, and an opportunity to comment on, the modification;

(B) if the modification is significant, as determined by the Commission, the Commission has—

(i) provided adequate notice of the modification by publication in the area of the Area; and

(ii) conducted a public hearing with respect to the modification; and

(C) the Governor has approved the modification.

SECTION 1007. DUTIES OF THE COMMISSION.

(a) PLAN.—The Commission shall prepare, obtain approval for, implement, and support the Plan in accordance with section 9.

(b) MEETINGS.—

(1) TIMING.—

(A) INITIAL MEETING.—The Commission shall hold its first meeting not later than 90 days after the date on which its last initial member is appointed.

(B) SUBSEQUENT MEETINGS.—After the initial meeting, the Commission shall meet at the call of the chairperson or 7 of its members, except that the commission shall meet at least quarterly .

(2) QUORUM.—Ten members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(3) BUDGET.—The affirmative vote of not less than 10 members of the Commission shall be required to approve the budget of the Commission.

(c) ANNUAL REPORTS.—Not later than May 15 of each year, following the year in which the members of the Commission have been appointed, the Commission shall publish and submit to the Secretary and to the Governor, an annual report concerning the Commission's activities.

SECTION 1008. PREPARATION, REVIEW, AND IMPLEMENTATION OF THE PLAN.

(a) PREPARATION OF PLAN.—

(1) IN GENERAL.—Not later than 2 years after the Commission conducts its first meeting, the Commission shall submit to the Governor a Water Heritage Area Interpretation Plan.

(2) DEVELOPMENT.—In developing the Plan, the Commission shall—

(A) consult on a regular basis with appropriate officials of any Federal or State agency, political subdivision of the State, and local government that has jurisdiction over or an ownership interest in land, water, or water rights within the Area; and

(B) conduct public hearings within the Area for the purpose of providing interested persons the opportunity to testify about matters to be addressed by the Plan.

(3) RELATIONSHIP TO EXISTING PLANS.—The Plan—

(A) shall recognize any existing Federal, State, and local plans;

(B) shall not interfere with the implementation, administration, or amendment of such plans; and

(C) to the extent feasible, shall seek to coordinate the plans and present a unified interpretation plan for the Area.

(b) REVIEW OF PLAN.—

(1) IN GENERAL.—The Commission shall submit the Plan to the Governor for his review.

(2) GOVERNOR.—The Governor may review the Plan and if he concurs in the Plan, may submit the Plan to the Secretary, together with any recommendations.

(3) SECRETARY.—The Secretary shall approve or disapprove the Plan within 90 days. In reviewing the Plan, the Secretary shall consider the adequacy of—

(A) public participation; and

(B) the Plan in interpreting, for the educational and inspirational benefit or present and future generations, the unique and significant contributions to our national heritage of cultural and historical lands, waterways, and structures within the Area.

(c) DISAPPOVAL OF PLAN.—

(1) NOTIFICATION BY SECRETARY.—If the Secretary disapproves the Plan, the Secretary shall, not later than 60 days after the date of disapproval, advise the Governor and the Commission of the reasons for disapproval, together with recommendations for revision.

(2) REVISION AND RESUBMISSION TO GOVERNOR.—Not later than 90 days after receipt

of the notice of disapproval, the Commission shall revise and resubmit the Plan to the Governor for review.

(3) RESUBMISSION TO SECRETARY.—If the Governor concurs in the revised Plan, he may submit the revised Plan to the Secretary who shall approve or disapprove the revision within 60 days. If the Governor does not concur in the revised Plan, he may resubmit it to the Commission together with his recommendations for further consideration and modification.

(d) IMPEMENTATION OF PLAN.—After approval by the Secretary, the Commission shall implement and support the Plan as follows:

(1) CULTURAL RESOURCES.—

(A) IN GENERAL.—The Commission shall assist Federal agencies, State agencies, political subdivisions of the State, and nonprofit organizations in the conservation and interpretation of cultural resources within the Area.

(B) EXCEPTION.—In providing the assistance, the Commission shall in no way infringe upon the authorities and policies of a Federal agency, State agency, or political subdivision of the State concerning the administration and management of property, water, or water rights held by such agency, political subdivision, or private persons or entities, or affect the jurisdiction of the State of Colorado over any property, water, or water rights within the Area.

(2) PUBLIC AWARENESS.—The Commission shall assist in the enhancement of public awareness of, and appreciation for, the historical, recreational, architectural, and engineering structures in the Area, and the archaeological, geological, and cultural resources and sites in the Area—

(A) by encouraging private owners of identified structures, sites, and resources to adopt voluntary measures for the preservation of the identified structure, site, or resource; and

(B) by cooperating with Federal agencies, State agencies, and political subdivisions of the State in acquiring, on a willing seller basis, any identified structure, site, or resource which the Commission, with the concurrence of the Governor, determines should be acquired and held by an agency of the State.

(3) RESTORATION.—The Commission may assist Federal agencies, State agencies, political subdivisions of the State, and nonprofit organizations in the restoration of any identified structure or site in the Area with consent of the owner. The assistance may include providing technical assistance for historic preservation, revitalization, and enhancement efforts.

(4) INTERPRETATION.—The Commission shall assist in the interpretation of the historical, present, and future uses of the Area—

(A) by consulting with the Secretary with respect to the implementation of the Secretary's duties under section 1010;

(B) by assisting the State and political subdivisions of the State in establishing and maintaining visitor orientation centers and other interpretive exhibits within the Area;

(C) by encouraging voluntary cooperation and coordination, with respect to ongoing interpretive services in the Area, among Federal agencies, State agencies, political subdivisions of the State, nonprofit organizations, and private citizens, and

(D) by encouraging Federal agencies, State agencies, political subdivisions of the State, and nonprofit organizations to undertake new interpretive initiatives with respect to the Area.

(5) RECOGNITION.—The Commission shall assist in establishing recognition for the Area by actively promoting the cultural, historical, natural, and recreational resources of the Area on a community, regional, statewide, national, and international basis.

(6) LAND EXCHANGES.—The Commission shall assist in identifying and implementing land exchanges within the State of Colorado by Federal and State agencies that will expand open space and recreational opportunities within the flood plain of the Area.

SECTION 1009. TERMINATION OF TRAVEL EXPENSES PROVISION.

Effective on the date that is 5 years after the date on which the Secretary approves the Plan, section 5 is amended by striking subsection (e).

SECTION 1010. DUTIES OF THE SECRETARY.

(a) ACQUISITION OF LAND.—The Secretary may acquire land and interests in land within the Area that have been specifically identified by the Commission for acquisition by the Federal government and that have been approved for such acquisition by the Governor and the political subdivision of the State where the land is located by donation, purchase with donated or appropriated funds, or exchange. Acquisition authority may only be used if such lands cannot be acquired by donation or exchange. No land or interest in land may be acquired without the consent of the owner.

(b) TECHNICAL ASSISTANCE.—The Secretary shall, upon the request of the Commission, provide technical assistance to the Commission in the preparation and implementation of the Plan pursuant to section 1008.

(c) DETAIL.—Each fiscal year during the existence of the Commission, the Secretary shall detail to the Commission, on a nonreimbursable basis, 2 employees of the Department of the Interior to enable the Commission to carry out the Commission's duties under section 1007.

SECTION 1011. OTHER FEDERAL ENTITIES.

(a) DUTIES.—Subject to section 1001, a Federal entity conducting or supporting activities directly affecting the flow of the Cache La Poudre River through the Area, or the natural resources of the Area shall consult with the Commission with respect to such activities;

(b) AUTHORIZATION.—

(1) IN GENERAL.—The Secretary or Administrator of a Federal agency may acquire land in the flood plain of the Area by exchange for other lands within such agency's jurisdiction within the State of Colorado, based on fair market value: *Provided*, That such lands have been identified by the Commission for acquisition by a Federal agency and the Governor and the political subdivision of the State or the owner where the lands are located concur in the exchange. Land so acquired shall be used to fulfill the purpose for which the Area is established.

(2) AUTHORIZATION TO CONVEY PROPERTY.—The first sentence of section 203(k)(3) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(3)) is amended by striking "historic monument, for the benefit of the public" and inserting "historic monument or any such property within the State of Colorado for the Cache La Poudre River National Water Heritage Area, for the benefit of the public".

SECTION 1012. EFFECT ON ENVIRONMENTAL AND OTHER STANDARDS, RESTRICTIONS, AND SAVINGS PROVISIONS.

(a) EFFECT ON ENVIRONMENTAL AND OTHER STANDARDS.—

(1) VOLUNTARY COOPERATION.—In carrying out this Title, the Commission and Secretary shall emphasize voluntary cooperation.

(2) RULES, REGULATIONS, STANDARDS, AND PERMIT PROCESSES.—Nothing in this Title shall be considered to impose or form the basis for imposition of any environmental, occupational, safety, or other rule, regulation, standard, or permit process that is different from those that would be applicable had the Area not been established.

(3) ENVIRONMENTAL QUALITY STANDARDS.—Nothing in this Title shall be considered to impose the application or administration of any Federal or State environmental quality standard that is different from those that will be applicable had the Area not been established.

(4) WATER STANDARDS.—Nothing in this Title shall be considered to impose any Federal or State water use designation or water quality standard upon uses of, or discharges to, waters of the State or waters of the United States, within or adjacent to the Area, that is more restrictive than those that would be applicable had the Area not been established.

(5) PERMITTING OF FACILITIES.—Nothing in the establishment of the Area shall abridge, restrict, or alter any applicable rule, regulation, standard, or review procedure for permitting of facilities within or adjacent to the Area.

(6) WATER FACILITIES.—Nothing in the establishment of the Area shall affect the continuing use and operation, repair, rehabilitation, expansion, or new construction of water supply facilities, water and wastewater treatment facilities, stormwater facilities, public utilities, and common carriers.

(7) WATER AND WATER RIGHTS.—Nothing in the establishment of the Area shall be considered to authorize or imply the reservation or appropriation of water or water rights for any purpose.

(b) RESTRICTIONS ON COMMISSION AND SECRETARY.—Nothing in this Title shall be construed to vest in the Commission or the Secretary the authority to—

(1) require a Federal agency, State agency, political subdivision of the State, or private person (including an owner of private property) to participate in a project or program carried out by the Commission or the Secretary under the Title;

(2) intervene as a party in an administrative or judicial proceeding concerning the application or enforcement of a regulatory authority of a Federal agency, State agency, or political subdivision of the State, including, but not limited to, authority relating to—

(A) land use regulation;

(B) environmental quality;

(C) licensing;

(D) permitting;

(E) easements;

(F) private land development; or

(G) other occupational or access issue;

(3) establish or modify a regulatory authority of a Federal agency, State agency, or political subdivision of the State, including authority relating to—

(A) land use regulation;

(B) environmental quality; or

(C) pipeline or utility crossings;

(4) modify a policy of a Federal agency, State agency, or political subdivision of the State;

(5) attest in any manner the authority and jurisdiction of the State with respect to the acquisition of lands or water, or interest in lands or water;

(6) vest authority to reserve or appropriate water or water rights in any entity for any purpose;

(7) deny, condition, or restrict the construction, repair, rehabilitation, or expansion of water facilities, including stormwater, water, and wastewater treatment facilities; or

(8) deny, condition, or restrict the exercise of water rights in accordance with the substantive and procedural requirements of the laws of the state.

(c) SAVINGS PROVISION.—Nothing in this Title shall diminish, enlarge, or modify a right of a Federal agency, State agency, or political subdivision of the State—

(1) to exercise civil and criminal jurisdiction within the Area; or

(2) to tax persons, corporations, franchises, or property, including minerals and other interests in or on lands or waters within the urban river corridor portions of the Area.

(d) ACCESS TO PRIVATE PROPERTY.—Nothing in this Title requires an owner of private property to allow access to the property by the public.

SECTION 1013. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated not to exceed $50,000 to the Commission to carry out this Act.

(b) MATCHING FUNDS.—Funds may be made available pursuant to this section only to the extent they are matched by equivalent funds or in-kind contributions of services or materials from non-Federal sources.

TITLE XI—GILPIN COUNTY, COLORADO LAND EXCHANGE

SECTION 1101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds and declares that—

(1) certain scattered parcels of Federal land located within Gilpin County, Colorado, are currently administered by the Secretary of the Interior as part of the Royal Gorge Resource Area, Canon City District, United States Bureau of Land Management;

(2) these land parcels, which comprises approximately 133 separate tracts of land, and range in size from approximately 38 acres to much less than an acre have been identified as suitable for disposal by the Bureau of Land Management through its resource management planning process and are appropriate for disposal; and

(3) even though the Federal land parcels in Gilpin County, Colorado, are scattered and small in size, they nevertheless by virtue of their proximity to existing communities appear to have a fair market value which may be used by the Federal Government to exchange for lands which will better lend themselves to Federal management and have higher values for future public access, use and enjoyment, recreation, the protection and enhancement of fish and wildlife and fish and wildlife habitat, and the protection of riparian lands, wetlands, scenic beauty and other public values.

(b) PURPOSE.—It is the purpose of this Title to authorize, direct, facilitate and expedite the land exchange set forth herein in order to further the public interest by disposing of Federal lands with limited public utility and acquire in exchange therefor lands with important values for permanent public management and protection.

SECTION 1102. LAND EXCHANGE.

(a) IN GENERAL.—The exchange directed by this Title shall be consummated if within 90 days after enactment of this Act, Lake Gulch, Inc., a Colorado Corporation (as defined in section 1104 of this Title) offers to transfer to the United States pursuant to the provisions of this Title the offered lands or interests in land described herein.

(b) CONVEYANCE BY LAKE GULCH.—Subject to the provisions of section 1103 of this Title, Lake Gulch shall convey to the Secretary of the Interior all right, title, and interest in and to the following offered lands—

(1) certain lands comprising approximately 40 acres with improvements thereon located in Larimer County, Colorado, and lying within the boundaries of Rocky Mountain National Park as generally depicted on a map entitled "Circle C Church Camp", dated August 1994, which shall upon their acquisition by the United States and without further action by the Secretary of the Interior be incorporated into Rocky Mountain National Park and thereafter be administered in accordance with the laws, rules and regulations generally applicable to the National Park System and Rocky Mountain National Park;

(2) certain lands located within and adjacent to the United States Bureau of Land Management San Luis Resource Area in Conejos County, Colorado, which comprise approximately 3,993 acres and are generally depicted on a map entitled "Quinlan Ranches Tract", dated August 1994; and

(3) certain lands located within the United States Bureau of Land Management Royal Gorge Resource Area in Huerfano County, Colorado, which comprise approximately 4,700 acres and are generally depicted on a map entitled "Bonham Ranch-Cucharas Canyon", dated June 1995: *Provided, however*, That it is the intention of Congress that such lands may remain available for the grazing of livestock as determined appropriate by the Secretary in accordance with applicable laws, rules, and regulations: *Provided further*, That if the Secretary determines that certain of the lands acquired adjacent to Cucharas Canyon hereunder are not needed for public purposes they may be sold in accordance with the provisions of section 203 of the Federal Land Policy and Management Act of 1976 and other applicable law.

(c) SUBSTITUTION OF LANDS.—If one or more of the precise offered land parcels identified above is unable to be conveyed to the United States due to appraisal or other problems, Lake Gulch and the Secretary may mutually agree to substitute therefor alternative offered lands acceptable to the Secretary.

(d) COVEYANCE BY THE UNITED STATES.—(1) Upon receipt of title to the lands identified in subsection (a) the Secretary shall simultaneously convey to Lake Gulch all right, title, and interest of the United States, subject to valid existing rights, in and to the following selected lands—

(A) certain surveyed lands located in Gilpin County, Colorado, Township 3 South, Range 72 West, Sixth Principal Meridian, Section 18, Lots 118–220, which comprise approximately 195 acres and are intended to include all federally owned lands in section 18, as generally depicted on a map entitled "Lake Gulch Selected Lands", dated July 1994;

(B) certain surveyed lands located in Gilpin County, Colorado, Township 3 South, Range 72 West, Sixth Principal Meridian, Section 17, Lots 37, 38, 39, 40, 52, 53, and 54, which comprise approximately 96 acres, as generally depicted on a map entitled "Lake Gulch Selected Lands", dated July 1994; and

(C) certain unsurveyed lands located in Gilpin County, Colorado, Township 3 South, Range, 73 West, Sixth Principal Meridian, Section 13, which comprise approximately 11 acres, and are generally depicted as parcels 302–304, 306 and 308–326 on a map entitled "Lake Gulch Selected Lands", dated July 1994: *Provided, however*, That a parcel or parcels of land in section 13 shall not be transferred to Lake Gulch if at the time of the proposed transfer the parcel or parcels are under formal application for transfer to a qualified unit of local government. Due to the small and unsurveyed nature of such parcels proposed for transfer to Lake Gulch in section 13, and the high cost of surveying such small parcels, the Secretary is authorized to transfer such section 13 lands to Lake Gulch without survey based on such legal or other description as the Secretary determines appropriate to carry out the basic intent of the map cited in this subparagraph.

(2) If the Secretary and Lake Gulch mutually agree, and the Secretary determines it is in the public interest, the Secretary may utilize the authority and direction of this Title to transfer to Lake Gulch lands in sections 17 and 13 that are in addition to those precise selected lands shown on the map cited herein, and which are not under formal application for transfer to a qualified unit of local government, upon transfer to the Secretary of additional offered lands acceptable to the Secretary or upon payment to the Secretary by Lake Gulch of cash equalization money amounting to the full appraised fair market value of any such additional lands. If any such additional lands are located in section 13 they may be transferred to Lake Gulch without survey based on such legal or other description as the Secretary determines appropriate as long as the Secretary determines that the boundaries of any adjacent lands not owned by Lake Gulch can be properly identified so as to avoid possible future boundary conflicts or disputes. If the Secretary determines surveys are necessary to convey any such additional lands to Lake Gulch, the costs of such surveys shall be paid by Lake Gulch but shall not be eligible for any adjustment in the value of such additional lands pursuant to section 206(f)(2) of the Federal Land Policy and Management Act of 1976 (as amended by the Federal Land Exchange Facilitation Act of 1988) (43 U.S.C. 1716(f)(2)).

(3) Prior to transferring out of public ownership pursuant to this Title or other authority of law any lands which are contiguous to North Clear Creek southeast of the City of Black Hawk, Colorado in the County of Gilpin, Colorado, the Secretary shall notify and consult with the County and City and afford such units of local government an opportunity to acquire or reserve pursuant to the Federal Land Policy and Management Act of 1976 or other applicable law, such easements or rights-of-way parallel to North Clear Creek as may be necessary to serve public utility line or recreation path needs: *Provided, however*, That any survey or other costs associated with the acquisition or reservation of such easements or rights-of-way shall be paid for by the unit or units of local government concerned.

SECTION 1103. TERMS AND CONDITIONS OF EXCHANGE.

(a) EQUALIZATION OF VALUE.—

(1) The values of the lands to be exchanged pursuant to this Title shall be equal as determined by the Secretary of the Interior utilizing comparable sales of surface and subsurface property and nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Standards for Federal Land Acquisition, the Uniform Standards of Professional Appraisal Practice, the provisions of section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)), and other applicable law.

(2) In the event any cash equalization or land sale moneys are received by the United

States pursuant to this Act, any such moneys shall be retained by the Secretary of the Interior and may be utilized by the Secretary until fully expended to purchase from willing sellers land or water rights, or a combination thereof, to augment wildlife habitat and protect and restore wetlands in the Bureau of Land Management's Blanca Wetlands, Alamosa County, Colorado.

(3) Any water rights acquired by the United States pursuant to this section shall be obtained by the Secretary of the Interior in accordance with all applicable provisions of Colorado law, including the requirement to change the time, place, and type of use of said water rights through the appropriate State legal proceedings and to comply with any terms, conditions, or other provisions contained in an applicable decree of the Colorado Water Court. The use of any water rights acquired pursuant to this section shall be limited to water that can be used or exchanged for water that can be used on the Blanca Wetlands. Any requirement or proposal to utilize facilities of the San Luis Valley Project, Closed Basin Diversion, in order to effectuate the use of any such water rights shall be subject to prior approval of the Rio Grande Water Conservation District.

(b) RESTRICTIONS ON SELECTED LANDS.—(1) Conveyance of the selected lands to Lake Gulch pursuant to this Title shall be contingent upon Lake Gulch executing an agreement with the United States prior to such conveyance, the terms of which are acceptable to the Secretary of the Interior, and which—

(A) grant the United States a covenant that none of the selected lands (which currently lie outside the legally approved gaming area) shall ever be used for purposes of gaming should the current legal gaming area ever be expanded by the State of Colorado; and

(B) permanently hold the United States harmless for liability and indemnify the United States against all costs arising from any activities, operations (including the strong, handling, and dumping of hazardous materials or substances) or other acts conducted by Lake Gulch or its employees, agents, successors or assigns on the selected lands after their transfer to Lake Gulch: *Provided, however*, That nothing in this Title shall be construed as either diminishing or increasing any responsibility or liability of the United States based on the condition of the selected lands prior to or on the date of their transfer to Lake Gulch.

(2) Conveyance of the selected lands to Lake Gulch pursuant to this Title shall be subject to the existing easement of Gilpin County Road 6.

(3) The above terms and restrictions of this subsection shall not be considered in determining, or result in any diminution in, the fair market value of the selected land for purposes of the appraisals of the selected land required pursuant to section 1102 of this Title.

(c) REVOCATION OF WITHDRAWAL.—The Public Water Reserve established by Executive order dated April 17, 1926 (Public Water Reserve 107), Serial Number Colorado 17321, is hereby revoked insofar as it affects the NW¼SW¼ of Section 17, Township 3 South, Range 72 West, Sixth Principal Meridian, which covers a portion of the selected lands identified in this Title.

SECTION 1104. MISCELLANEOUS PROVISIONS.

(a) DEFINITIONS.—As used in this Title:

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "Lake Gulch" means Lake Gulch, Inc., a Colorado corporation, or its successors, heirs or assigns.

(3) The term "offered land" means lands to be conveyed to the United States pursuant to this Title.

(4) The term "selected land" means lands to be transferred to Lake Gulch, Inc., or its successors, heirs or assigns pursuant to this Title.

(5) The term "Blanca Wetlands" means an area of land comprising approximately 9,290 acres, as generally depicted on a map entitled "Blanca Wetlands", dated August 1994, or such land as the Secretary may add thereto by purchase from willing sellers after the date of enactment of this Act utilizing funds provided by this Title or such other moneys as Congress may appropriate.

(b) TIME REQUIREMENT FOR COMPLETING TRANSFER.—It is the intent of Congress that unless the Secretary and Lake Gulch mutually agree otherwise the exchange of lands authorized and directed by this Title shall be completed not later than 6 months after the date of enactment of this Act. In the event the exchange cannot be consummated within such 6-month-time period, the Secretary, upon application by Lake Gulch, is directed to sell to Lake Gulch at appraised fair market value any or all of the parcels (comprising a total of approximately 11 acres) identified in section 1102(d)(1)(C) of this Title as long as the parcel or parcels applied for are not under formal application for transfer to a qualified unit of local government.

(c) ADMINISTRATION OF LAND ACQUIRED BY UNITED STATES.—In accordance with the provisions of section 206(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(c)), all lands acquired by the United States pursuant to this Title shall upon acceptance of title by the United States and without further action by the Secretary concerned become part of and be managed as part of the administrative unit or area within which they are located.

TITLE XII—BUTTE COUNTY, CALIFORNIA LAND CONVEYANCE

SECTIN 1201. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that—

(1) certain landowners in Butte County, California who own property adjacent to the Plumas National Forest have been adversely affected by certain erroneous surveys;

(2) these landowners have occupied or improved their property in good faith and in reliance on erroneous surveys of their properties that they believed are accurate; and

(3) the 1992 Bureau of Land Management dependent resurvey of the Plumas National Forest will correctly establish accurate boundaries between such forest and private lands.

(b) PURPOSE.—It is the purpose of this Title to authorize and direct the Secretary of Agriculture to convey, without consideration, certain lands in Butte County, California, to persons claiming to have been deprived of title to such lands.

SECTION 1202. DEFINITIONS.

For the purpose of this Title—

(1) the term "affected lands" means those Federal lands located in the Plumas National Forest in Butte County, California, in sections 11, 12, 13, and 14, township 21 north, range 5 East, Mount Diablo Meridian, as described by the dependent resurvey by the Bureau of Land Management conducted in 1992, and subsequent Forest Service land line location surveys, including all adjoining parcels where the property line as identified by the 1992 BLM dependent resurvey and National Forest boundary lines before such dependent resurvey are not coincident;

(2) the term "claimant" means an owner of real property in Butte County, California, whose real property adjoins Plumas National Forest lands described in subsection (a), who claims to have been deprived by the United States of title to property as a result of previous erroneous surveys; and

(3) the term "Secretary" means the Secretary of Agriculture.

SECTION 1203. CONVEYANCE OF LANDS.

Notwithstanding any other provision of law, the Secretary is authorized and directed to convey, without consideration, all right, title, and interest of the United States in and to affected lands as described in section 1202(1), to any claimant or claimants, upon proper application from such claimant or claimants, as provided in section 1204.

SECTION 1204. TERMS AND CONDITIONS OF CONVEYANCE.

(a) NOTIFICATION.—Not later than 2 years after the date of enactment of this Act, claimants shall notify the Secretary, through the Forest Supervisor of the Plumas National Forest, in writing of their claim to affected lands. Such claim shall be accompanied by—

(1) a description of the affected lands claimed;

(2) information relating to the claim of ownership of such lands; and

(3) such other information as the Secretary may require.

(b) ISSUANCE OF DEED.—(1) Upon a determination by the Secretary that issuance of a deed for affected lands is consistent with the purpose and requirements of this Title, the Secretary shall issue a quitclaim deed to such claimant for the parcel to be conveyed.

(2) Prior to the issuance of any such deed as provided in paragraph (1), the Secretary shall ensure that—

(A) the parcel or parcels to be conveyed have been surveyed in accordance with the Memorandum of Understanding between the Forest Service and the Bureau of Land Management, dated November 11, 1989;

(B) all new property lines established by such surveys have been monumented and marked; and

(C) all terms and conditions necessary to protect third party and Government Rights-of-Way or other interests are included in the deed.

(3) The Federal Government shall be responsible for all surveys and property line markings necessary to implement this subsection.

(c) NOTIFICATION TO BLM.—The Secretary shall submit to the Secretary of the Interior an authenticated copy of each deed issued pursuant to this Title no later than 30 days after the date such deed is issued.

SECTION 1205. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as necessary to carry out the purposes of this Title.

TITLE XIII—CARL GARNER FEDERAL LANDS CLEANUP DAY

SECTION 1301.

The Federal Lands Cleanup Act of 1985 (36 U.S.C. 169i—169i-1) is amended by striking the terms "Federal Lands Cleanup Day" each place it appears and inserting "Carl Garner Federal Lands Cleanup Day."

TITLE XIV—ANAKTUVUK PASS LAND EXCHANGE

SECTION 1401. FINDINGS.

The Congress makes the following findings:

(1) The Alaska National Interest Lands Conservation Act (94 Stat. 2371), enacted on December 2, 1980, established Gates of the Arctic National Park and Preserve and Gates of the Arctic Wilderness. The village of

Anaktuvuk Pass, located in the highlands of the central Brooks Range, is virtually surrounded by these national park and wilderness lands and is the only Native village located within the boundary of a National Park System unit in Alaska.

(2) Unlike most other Alaskan Native communities, the village of Anaktuvuk Pass is not located on a major river, lake, or coastline that can be used as a means of access. The residents of Anaktuvuk Pass have relied increasingly on snow machines in winter and all-terrain vehicles in summer as their primary means of access of pursue caribou and other subsistence resources.

(3) In a 1993 land exchange agreement, linear easements were reserved by the Inupiat Eskimo people for use of all-terrain vehicles across certain national park lands, mostly along stream and river banks. These linear easements proved unsatisfactory, because they provided inadequate access to subsistence resources while causing excessive environmental impact from concentrated use.

(4) The National Park Service and the Nunamiut Corporation initiated discussions in 1985 to address concerns over the use of all-terrain vehicles on park and wilderness land. These discussions resulted in an agreement, originally executed in 1992 and thereafter amended in 1993 and 1994, among the National Park Service, Nunamiut Corporation, the City of Anaktuvuk Pass, and Arctic Slope Regional Corporation. Full effectuation of this agreement, as amended, by its terms requires ratification by the Congress.

SECTION 1402. RATIFICATION OF AGREEMENT.

(a) RATIFICATION.—

(1) IN GENERAL.—The terms, conditions, procedures, covenants, reservations and other provisions set forth in the document entitled "Donation, Exchange of Lands and Interests in Lands and Wilderness Redesignation Agreement Among Arctic Slope Regional Corporation, Nunamiut Corporation, City of Anaktuvuk Pass and the United States of America" (hereinafter referred to in this Title as "the Agreement"), executed by the parties on December 17, 1992, as amended, are hereby incorporated in this Title, are ratified and confirmed, and set forth the obligations and commitments of the United States, Arctic Slope Regional Corporation, Nunamiut Corporation and the City of Anaktuvuk Pass, as a matter of Federal law.

(2) LAND ACQUISITION.—Lands acquired by the United States pursuant to the Agreement shall be administered by the Secretary of the Interior (hereinafter referred to as the "Secretary") as part of Gates of the Arctic National Park and Preserve, subject to the laws and regulations applicable thereto.

(b) MAPS.—The maps set forth as Exhibits C1, C2, and D through I to the Agreement depict the lands subject to the conveyances, retention of surface access rights, access easements and all-terrain vehicle easements. These lands are depicted in greater detail on a map entitled "Land Exchange Actions, Proposed Anaktuvuk Pass Land Exchange and Wilderness Redesignation, Gates of the Arctic National Park and Preserve", Map No. 185/80,039, dated April 1994, and on file at the Alaska Regional Office of the National Park Service and the offices of Gates of the Arctic National Park and Preserve in Fairbanks, Alaska. Written legal descriptions of these lands shall be prepared and made available in the above offices. In case of any discrepancies, Map No. 185/80,039 shall be controlling.

SECTION 1403. NATIONAL PARK SYSTEM WILDERNESS.

(a) GATES OF THE ARCTIC WILDERNESS.—

(1) REDESIGNATION.—Section 701(2) of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2417) establishing the Gates of the Arctic Wilderness is hereby amended with the addition of approximately 56,825 acres as wilderness and the rescission of approximately 73,993 acres as wilderness, thus revising the Gates of the Arctic Wilderness to approximately 7,034,832 acres.

(2) MAP.—The lands redesignated by paragraph (1) are depicted on a map entitled "Wilderness Actions, Proposed Anaktuvuk Pass Land Exchange and Wilderness Redesignation, Gates of the Arctic National Park and Preserve", Map No. 185/80,040, dated April 1994, and on file at the Alaska Regional Office of the National Park Service and the office of Gates of the Arctic National Park and Preserve in Fairbanks, Alaska.

(b) NOATAK NATIONAL PRESERVE.—Section 201(8)(a) of the Alaska National Interest Land Conservation Act (94 Stat. 2380) is amended by—

(1) striking "approximately six million four hundred and sixty thousand acres" and inserting in lieu thereof "approximately 6,477,168 acres"; and

(2) inserting "and the map entitled "Noatak National Preserve and Noatak Wilderness Addition" dated September 1994" after "July 1980".

(c) NOATAK WILDERNESS.—Section 701(7) of the Alaska National Interest Lands Conservation Act (94 Stat. 2417) is amended by striking "approximately five million eight hundred thousand acres" and inserting in lieu thereof "approximately 5,817,168 acres".

SECTION 1404. CONFORMANCE WITH OTHER LAW.

(a) ALASKA NATIVE CLAIMS SETTLEMENT ACT.—All of the lands, or interests therein, conveyed to and received by Arctic Slope Regional Corporation or Nunamiut Corporation pursuant to the Agreement shall be deemed conveyed and received pursuant to exchanges under section 22(f) of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, 1621(f)). All of the lands or interests in lands conveyed pursuant to the Agreement shall be conveyed subject to valid existing rights.

(b) ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT.—Except to the extent specifically set forth in this Title or the Agreement, nothing in this Title or in the Agreement shall be construed to enlarge or diminish the rights, privileges, or obligations of any person, including specifically the preference for subsistence uses and access to subsistence resources provided under the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 et seq.).

TITLE XV—ALASKA PENINSULA SUBSURFACE CONSOLIDATION

SECTION 1501. DEFINITIONS.

As used in this Title.

(1) AGENCY.—The term agency—

(A) means—

(i) any instrumentality of the United States; and

(ii) any Government corporation (as defined in section 9101(1) of title 31, United States Code); and

(B) includes any element of an agency.

(2) ALASKA NATIVE CORPORATION.—The term "Alaska Native Corporation" has the same meaning as is provided for "Native Corporation" in section 3(m) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(m)).

(3) FEDERAL LANDS OR INTEREST THEREIN.—The term "Federal lands or interests therein" means any lands or properties owned by the United States (i) which are administered by the Secretary, or (ii) which are subject to a lease to third parties, or (iii) which have been made available to the Secretary for exchange under this section through the concurrence of the director of the agency administering such lands or properties; provided, however, excluded from such lands shall be those lands which are within an existing conservation system unit as defined in section 102(4) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3102(4)), and those lands the mineral interest for which are currently under mineral lease.

(4) KONIAG.—The term "Koniag" means Koniag, Incorporated, which is a regional Corporation.

(5) REGIONAL CORPORATION.—The term "Regional Corporation" has the same meaning as is provided in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g)).

(6) SECRETARY.—Except as otherwise provided, the term "Secretary" means the Secretary of the Interior.

(7) SELECTION RIGHTS.—The term "selection rights" means those rights granted to Koniag, pursuant to subsections (a) and (b) of section 12, and section 14(h)(8), of the Alaska Native Claims Settlement Act (43 U.S.C. 1611 and 1613(h)(8)), to receive title to the oil and gas rights and other interests in the subsurface estate of the approximately 275,000 acres of public lands in the State of Alaska identified as "Koniag Selections" on the map entitled "Koniag Interest Lands, Alaska Peninsula", dated May 1989.

SECTION 1502. VALUATION OF KONIAG SELECTION RIGHTS.

(a) Pursuant to subsection (b) hereof, the Secretary shall value the Selection Rights which Koniag possesses within the boundaries of Aniakchak National Monument and Preserve, Alaska Peninsula National Wildlife Refuge, and Becharof National Wildlife Refuge.

(b) VALUE.—

(1) IN GENERAL.—The value of the selection rights shall be equal to the fair market value of—

(A) the oil and gas interests in the lands or interests in lands that are the subject of the selection rights; and

(B) in the case of the lands or interests in lands for which Koniag is to receive the entire subsurface estate, the subsurface estate of the lands or interests in lands that are the subject of the selection rights.

(2) APPRAISAL.—

(A) SELECTION OF APPRAISER.—

(i) IN GENERAL.—Not later than 90 days after the date of enactment of this Title the Secretary and Koniag shall meet to select a qualified appraiser to conduct an appraisal of the selection rights. Subject to clause (ii), the appraiser shall be selected by the mutual agreement of the Secretary and Koniag.

(ii) FAILURE TO AGREE.—If the Secretary and Koniag fail to agree on an appraiser by the date that is 60 days after the date of the initial meeting referred to in clause (i), the Secretary and Koniag shall, by the date that is not later than 90 days after the date of the initial meeting, each designate an appraiser who is qualified to perform the appraisal. The 2 appraisers so identified shall select a third qualified appraiser who shall perform the appraisal.

(B) STANDARDS AND METHODOLOGY.—The appraisal shall be conducted in conformity with the standards of the Appraisal Foundation (as defined in section 1121(9) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(9)).

(C) SUBMISSION OF APPRAISAL REPORT.—Not later than 180 days after the selection of an appraiser pursuant to subparagraph (A), the

appraiser shall submit to the Secretary and to Koniag a written appraisal report specifying the value of the selection rights and the methodology used to arrive at the value.

(3) DETERMINATION OF VALUE.—

(A) DETERMINATION BY THE SECRETARY.—Not later than 60 days after the date of the receipt of the appraisal report under paragraph (2)(c), the Secretary shall determine the value of the selection rights and shall notify Koniag of the determination.

(B) ALTERNATIVE DETERMINATION OF VALUE.—

(i) IN GENERAL.—Subject to clause (ii), if Koniag does not agree with the value determined by the Secretary under subparagraph (A), the procedures specified in section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716 (d)) shall be used to establish the value.

(ii) AVERAGE VALUE LIMITATION.—The average value per acre of the selection rights shall not be less than the value utilizing the risk adjusted discount cash flow methodology, but in no event may exceed $300.

SECTION 1503. KONIAG ACCOUNT.

(a) IN GENERAL.—

(1) the Secretary shall enter into negotiations for an agreement or agreements to exchange Federal lands or interests therein which are in the State of Alaska for the Selection Rights.

(2) If the value of the federal property to be exchanged is less than the value of the Selection Rights established in section 1501, and if such federal property to be exchanged is not generating receipts to the federal government in excess of one million dollars per year, then the Secretary may exchange the federal property for that portion of the Selection Rights having a value equal to that of the federal property. The remaining selection rights shall remain available for additional exchanges.

(3) For the purposes of any exchange to be consummated under this Title II, if less than all the selection rights are being exchanged, then the value of the selection rights being exchanged shall be equal to the number of acres of selection rights being exchanged multiplied by a fraction, the numerator of which is the value of all the selection rights as determined pursuant to Section 202 hereof and the denominator of which is the total number of acres of selection rights.

(b) ADDITIONAL EXCHANGES.—If, after ten years from the date of the enactment of this Title, the Secretary was unable to conclude such exchanges as may be required to acquire all of the selection rights, he shall conclude exchanges for the remaining selection rights for such federal property as may be identified by Koniag, which property is available for transfer to the administrative jurisdiction of the Secretary under any provision of law and which property, at the time of the proposed transfer to Koniag is not generating receipts to the federal government in excess of one million dollars per year. The Secretary shall keep Koniag advised in a timely manner as to which properties may be available for such transfer. Upon receipt of such identification by Koniag, the Secretary shall request in a timely manner the transfer of such identified property to the administrative jurisdiction of the Department of the Interior. Such property shall not be subject to the geographic limitations of section 206(b) of the Federal Land Policy and Management Act and may be retained by the Secretary solely for purposes of transferring it to Koniag to complete the exchange. Should the value of the property so identified by Koniag be in excess of the value of the remaining selection rights, then Koniag shall have the option of (i) declining to proceed with the exchange and identifying other property or (ii) paying the difference in value between the property rights.

(c) REVENUES.—Any property received by Koniag in an exchange entered into pursuant to subsection (a) of (b) of this section shall be deemed to be an interest in the subsurface for purposes of section 7(i) of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) provided, however, should Koniag make a payment to equalize the value in any such exchange, then Koniag will be deemed to hold an undivided interest in the property equal in value to such payment which interest shall not be subject to the provisions of section 9(j).

SECTION 1504. CERTAIN CONVEYANCES.

(a) INTERESTS IN LANDS.—For the purposes of section 21 (c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1620 (e)), the receipt of consideration, including, but not limited to, lands, cash or other property, by a Native Corporation for the relinquishment to the United States of land selection rights granted to any Native Corporation under such Act shall be deemed to be an interest in land.

(b) AUTHORITY TO APPOINT AND REMOVE TRUSTEE.—In establishing a Settlement Trust under section 39 of such Act (43 U.S.C. 1629c), Koniag may delegate, in whole or in part, the authority granted to Koniag under subsection (b)(2) of such section to any entity that Koniag may select without affecting the status of the trust as a Settlement Trust under such section.

TITLE XVI—STERLING FOREST

SECTION 1601. FINDINGS.

The Congress finds that—

(1) the Palisades Interstate Park Commission was established pursuant to a joint resolution of the 75th Congress approved in 1937 (Public Resolution No. 65; ch. 706; 50 Stat. 719), and chapter 170 of the Laws of 1937 of the State of New York and chapter 148 of the Laws of 1937 of the State of New Jersey;

(2) the Palisades Interstate Park Commission is responsible for the management of 23 parks and historic sites in New York and New Jersey, comprising over 82,000 acres;

(3) over 8,000,000 visitors annually seek outdoor recreational opportunities within the Palisades Park System;

(4) Sterling Forest is a biologically diverse open space on the New Jersey border comprising approximately 17,500 acres, and is a highly significant watershed area for the State of New Jersey, providing the source for clean drinking water for 25 percent of the State;

(5) Sterling Forest is an important outdoor recreational asset in the northeastern United States, within the most densely populated metropolitan region in the Nation;

(6) Sterling Forest supports a mixture of hardwood forests, wetlands, lakes, glaciated valleys, is strategically located on a wildlife migratory route, and provides important habitat for 27 rare or endangered species;

(7) the protection of Sterling Forest would greatly enhance the Appalachian National Scenic Trail, a portion of which passes through Sterling Forest, and would provide for enhanced recreational opportunities through the protection of lands which are an integral element of the trail and which would protect important trail viewsheds;

(8) stewardship and management costs for units of the Palisades Park System are paid for by the States of New York and New Jersey; thus, the protection of Sterling Forest through the Palisades Interstate Park Commission will involve a minimum of Federal funds;

(9) given the nationally significant watershed, outdoor recreational, and wildlife qualities of Sterling Forest, the demand for open space in the northeastern United States, and the lack of open space in the densely populated tri-state region, there is a clear Federal interest in acquiring the Sterling Forest for permanent protection of the watershed, outdoor recreational resources, flora and fauna, and open space; and

(10) such an acquisition would represent a cost effective investment, as compared with the costs that would be incurred to protect drinking water for the region should the Sterling Forest be developed.

SECTION 1602. PURPOSES.

The purposes of this title are—

(1) to establish the Sterling Forest Reserve in the State of New York to protect the significant watershed, wildlife, and recreational resources within the New York-New Jersey highlands region;

(2) to authorize Federal funding, through the Department of the Interior, for a portion of the acquisition costs for the Sterling Forest Reserve;

(3) to direct the Palisades Interstate Park Commission to convey to the Secretary of the Interior certain interests in lands acquired within the Reserve; and

(4) to provide for the management of the Sterling Forest Reserve by the Palisades Interstate Park Commission.

SECTION 1603. DEFINITIONS.

In this title:

(1) COMMISSION.—The term "Commission" means the Palisades Interstate Park Commission established pursuant to Public Resolution No. 65 approved August 19, 1937 (ch. 707; 50 Stat. 719).

(2) RESERVE.—The term "Reserve" means the Sterling Forest Reserve.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SECTION 1604. ESTABLISHMENT OF THE STERLING FOREST RESERVE.

(a) ESTABLISHMENT.—Upon the certification by the Commission to the Secretary that the Commission has acquired sufficient lands or interests therein to constitute a manageable unit, there is established the Sterling Forest Reserve in the State of New York.

(b) MAP.—

(1) COMPOSITION.—The Reserve shall consist of lands and interests therein acquired by the Commission within the approximately 17,500 acres of lands as generally depicted on the map entitled "Boundary Map, Sterling Forest Reserve", numbered SRF-60,001 and dated July 1, 1994.

(2) AVAILABILITY FOR PUBLIC INSPECTION.—The map described in paragraph (1) shall be on file and available for public inspection in the offices of the Commission and the appropriate offices of the National Park Service.

(c) TRANSFER OF FUNDS.—Subject to subsection (d), the Secretary shall transfer to the Commission such funds as are appropriated for the acquisition of lands and interests therein within the Reserve.

(d) CONDITIONS OF FUNDING.—

(1) AGREEMENT BY THE COMMISSION.—Prior to the receipt of any Federal funds authorized by this Title, the Commission shall agree to the following:

(A) CONVEYANCE OF LANDS IN EVENT OF FAILURE TO MANAGE.—If the Commission fails to manage the lands acquired within the Reserve in a manner that is consistent with this Title, the Commission shall convey fee

title to such lands to the United States, and the agreement stated in this subparagraph shall be recorded at the time of purchase of all lands acquired within the Reserve.

(B) CONSENT OF OWNERS.—No lands or interest in land may be acquired with any Federal funds authorized or transferred pursuant to this title except with the consent of the owner of the land or interest in land.

(C) INABILITY TO ACQUIRE LANDS.—If the Commission is unable to acquire all of the lands within the Reserve, to the extent Federal funds are utilized pursuant to this title, the Commission shall acquire all or a portion of the lands identified as "National Park Service Wilderness Easement Lands" and "National Park Service Conservation Easement Lands" on the map described in section 1604(b) before proceeding with the acquisition of any other lands within the Reserve.

(D) CONVEYANCE OF EASEMENT.—Within 30 days after acquiring any of the lands identified as "National Park Service Wilderness Easement Lands" and "National Park Service Conservation Easement Lands" on the map described in section 1604(b), the Commission shall convey to the United States:

(i) conservation easements on the lands described as "National Park Service Wilderness Easement Lands" on the map described in section 1604(b), which easements shall provide that the lands shall be managed to protect their wilderness character; and

(ii) conservation easements on the lands described as "National Park Service Conservation Easement Lands" on the map described in section 1604(b), which easements shall restrict and limit development and use of the property to that development and use that is—

(I) compatible with the protection of the Appalachian National Scenic Trail; and

(II) consistent with the general management plan prepared pursuant to section 1605(b).

(2) MATCHING FUNDS.—Funds may be transferred to the Commission only to the extent that they are matched from funds contributed by non-Federal sources.

SECTION 1605. MANAGEMENT OF THE RESERVE.

(a) IN GENERAL.—The Commission shall manage the lands acquired within the Reserve in a manner that is consistent with the Commission's authorities and with the purposes of this title.

(b) GENERAL MANAGEMENT PLAN.—Within 3 years after the date of enactment of this title, the Commission shall prepare a general management plan for the Reserve and submit the plan to the Secretary for approval.

SECTION 1606. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated such sums as are necessary to carry out this title, to remain available until expended.

(b) LAND ACQUISITION.—Of amounts appropriated pursuant to subsection (a), the Secretary may transfer to the Commission not more than $17,500,000 for the acquisition of lands and interests in land within the Reserve.

TITLE XVII—TAOS PUEBLO LAND TRANSFER

SECTION 1701. LAND TRANSFER.

(a) TRANSFER.—The parcel of land described in subsection (b) is hereby transferred without consideration to the Secretary of the Interior to be held in trust for the Pueblo de Taos. Such parcel shall be a part of the Pueblo de Taos Reservation and shall be managed in accordance with section 4 of the Act of May 21, 1933 (48 Stat. 108) (as amended, including as amended by Public Law 91–550 (84 Stat. 1437)).

(b) LAND DESCRIPTION.—The parcel of land referred to in subsection (a) is the land that is generally depicted on the map entitled "Land transferred to the Pueblo of Taos—proposed" and dated September 1994, comprises 764.33 acres, and is situated within sections 25, 26, 35, and 36, Township 27 North, Range 14 East, New Mexico Principal Meridian, within the Wheeler Peak Wilderness, Carson National Forest, Taos County, New Mexico.

(c) CONFORMING BOUNDARY ADJUSTMENTS.—The boundaries of the Carson National Forest and the Wheeler Peak Wilderness are hereby adjusted to reflect the transfer made by subsection (a).

(d) RESOLUTION OF OUTSTANDING CLAIMS.—The Congress finds and declares that, as a result of the enactment of this Act, the Taos Pueblo has no unresolved equitable or legal claims against the United States on the lands to be held in trust and to become part of the Pueblo de Taos Reservation under this Title.

TITLE XVIII—SKI FEES

SECTION 1801. SKI AREA PERMIT RENTAL CHARGE.

(a) The Secretary of Agriculture shall charge a rental charge for all ski area permits issued pursuant to section 3 of the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b), the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), or the 9th through 20th paragraphs under the heading "SURVEYING THE PUBLIC LANDS" under the heading "UNDER THE DEPARTMENT OF THE INTERIOR" in the Act of June 4, 1897 (30 Stat. 34, chapter 2), on National Forest System lands. Permit rental charges for permits issued pursuant to the National Forest Ski Area Permit Act of 1986 shall be calculated as set forth in subsection (b). Permit rental charges for existing ski area permits issued pursuant to the Act of March 4, 1915, and the Act of June 4, 1897, shall be calculated in accordance with those existing permits: *Provided*, That a permittee may, at the permittee's option, use the calculation method set forth in subsection (b).

(b)(1) The ski area permit rental charge (SAPRC) shall be calculated by adding the permittee's gross revenues from lift ticket/year-round ski area use pass sales plus revenue from ski school operations (LT+SS) and multiplying such total by the slope transport feet percentage (STFP) on National Forest System land. The amount shall be increased by the gross year-round revenue from ancillary facilities (GRAF) physically located on national forest land, including all permittee or subpermittee lodging, food service, rental shops, parking other ancillary operations, to determine the adjusted gross revenue (AGR) subject to the permit rental charge. The final rental charge shall be calculated by multiplying the AGR by the following percentages for each revenue bracket and adding the total for each revenue bracket:

(A) 1.5 percent of all adjusted gross revenue below $3,000,000;

(B) 2.5 percent for adjusted gross revenue between $3,000,000 and $15,000,000;

(C) 2.75 percent for adjusted gross revenue between $15,000,000 and $50,000,000; and

(D) 4.0 percent for the amount of adjusted gross revenue that exceed $50,000,000.

Utilizing the abbreviations indicated in this subsection the ski area permit fee (SAPF) formula can be simply illustrated as:

SAPF=((LT+SS)STFP)+GRAF=AGR;

AGR%BRACKETS

(2) In cases where ski areas are only partially located on national forest lands, the slope transport feet percentage on national forest land referred to in subsection (b) shall be calculated as generally described in the Forest Service Manual in effect as of January 1, 1992. Revenues from Nordic ski operations shall be included or excluded from the rental charge calculation according to the percentage of trails physically located on national forest land.

(3) In order to ensure that the rental charge remains fair and equitable to both the United States and the ski area permittees, the adjusted gross revenue figures for each revenue bracket in paragraph (1) shall be adjusted annually by the percent increase or decrease in the national Consumer Price Index for the preceding calendar year. No later than 5 years after the date of enactment of this Act and every 10 years thereafter the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives a report analyzing whether the ski area permit rental charge legislated by this Act is returning a fair market value rental to the United States together with any recommendations the Secretary may have for modifications of the system.

(c) The rental charge set forth in subsection (b) shall be due on June 1 of each year and shall be paid or pre-paid by the permittee on a monthly, quarterly, annual or other schedule as determined appropriate by the Secretary in consultation with the permittee. Unless mutually agreed otherwise by the Secretary and the permittee, the payment or prepayment schedule shall conform to the permittee's schedule in effect prior to enactment of this Act. To reduce costs to the permittee and the Forest Service, the Secretary shall each year provide the permittee with a standardized form and worksheets (including annual rental charge calculation brackets and rates) to be used for rental charge calculation and submitted with the rental charge payment. Information provided on such forms shall be compiled by the Secretary annually and kept in the Office of the Chief, U.S. Forest Service.

(d) The ski area permit rental charge set forth in this section shall become effective on June 1, 1996 and cover receipts retroactive to June 1, 1995: Provided, however, That if a permittee has paid rental charges for the period June 1, 1995, to June 1, 1996, under the graduated rate rental charge system formula in effect prior to the date of enactment of this Act, such rental charges shall be credited toward the new rental charge due on June 1, 1996. In order to ensure increasing rental charge receipt levels to the United States during transition from the graduated rate rental charge system formula to the formula of this Act, the rental charge paid by any individual permittee shall be—

(1) for the 1995–1996 permit year, either the rental charge paid for the preceding 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher;

(2) for the 1996–1997 permit year, either the rental charge paid for the 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher;

(3) for the 1997–1998 permit year, either the rental charge for the 1994–1995 base year or the rental charge calculated pursuant to this Act, whichever is higher.

If an individual permittee's adjusted gross revenue for the 1995–1996, 1996–1997, or 1997–1998 permit years falls more than 10 percent below the 1994–1995 base year, the rental

charge paid shall be the rental charge calculated pursuant to this Act.

(e) Under no circumstances shall revenue, or subpermittee revenue (other than lift ticket, area use pass, or ski school sales) obtained from operations physically located on non-national forest land be included in the ski area permit rental charge calculation.

(f) To reduce administrative costs of ski area permittees and the Forest Service the terms "revenue" and "sales", as used in this section, shall mean actual income from sales and shall not include sales of operating equipment, refunds, rent paid to the permittee by sublessees, sponsor contributions to special events or any amounts attributable to employee gratuities or employee lift tickets, discounts, or other goods or services (except for bartered goods and complimentary lift tickets) for which the permittee does not receive money.

(g) In cases where an area of national forest land is under a ski area permit but the permittee does not have revenue or sales qualifying for rental charge payment pursuant to subsection (a), the permittee shall pay an annual minimum rental charge of $2 for each national forest acre under permit or a percentage of appraised land value, as determined appropriate by the Secretary.

(h) Where the new rental charge provided for in subsection (b)(1) results in an increase in permit rental charge greater than one half of one percent of the permittee's adjusted gross revenue as determined under subsection (b)(1), the new rental charge shall be phased in over a five year period in a manner providing for increases of approximately equal increments.

(i) To reduce federal costs in administering the provisions of this Act, the reissuance of a ski area permit to provide activities similar in nature and amount to the activities provided under the previous permit shall not constitute a major Federal action for the purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.).

SECTION 1802. WITHDRAWALS.

Subject to valid existing rights, all lands located within the boundaries of ski area permits issued prior to, on or after the date of enactment of this Act pursuant to authority of the Act of March 4, 1915 (38 Stat. 1101, chapter 144; 16 U.S.C. 497), and the Act of June 4, 1897, or the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) are hereby and henceforth automatically withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral and geothermal leasing and all amendments thereto. Such withdrawal shall continue for the full term of the permit and any modification, reissuance, or renewal thereof. Unless the Secretary requests otherwise of the Secretary of the Interior, such withdrawal shall be canceled automatically upon expiration or other termination of the permit and the land automatically restored to all appropriation not otherwise restricted under the public land laws.

TITLE XIX—THE SELMA TO MONTGOMERY NATIONAL HISTORIC TRAIL

SECTION 1901.

That section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by adding at the end thereof the following new paragraph.

"(20) The Selma to Montgomery National Historic Trail, consisting of 54 miles of city streets and United States Highway 80 from Brown Chapel A.M.E. Church in Selma to the State Capitol Building in Montgomery, Alabama, traveled by voting rights advocates during March 1965 to dramatize the need for voting rights legislation, as generally described in the report of the Secretary of the Interior prepared pursuant to subsection (b) of this section entitled "Selma to Montgomery" and dated April 1993. Maps depicting the route shall be on file and available for public inspection in the Office of the National Park Service, Department of the Interior. The trail shall be administered in accordance with this Act, including section 7(h). The Secretary of the Interior, acting through the National Park Service, which shall be the lead Federal agency, shall cooperate with other Federal, State and local authorities to preserve historic sites along the route, including (but not limited to) the Edmund Pettus Bridge and the Brown Chapel A.M.E. Church.".

TITLE XX—UTAH PUBLIC LANDS MANAGEMENT ACT

SECTION 2001. DESIGNATION OF WILDERNESS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131 et seq.), the following lands in the State of Utah are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) Certain lands in the Desolation Canyon Wilderness Study Area comprised of approximately 291,130 acres, as generally depicted on a map entitled "Desolation Canyon Proposed Wilderness" and dated December 3, 1995, and which shall be known as the Desolation Canyon Wilderness.

(2) Certain lands in the San Rafael Reef Wilderness Study Area comprised of approximately 57,982 acres, as generally depicted on a map entitled "San Rafael Reef Proposed Wilderness" and dated December 12, 1995, and which shall be known as the San Rafael Reef Wilderness.

(3) Certain lands in the Horseshoe Canyon Wilderness Study Area (North) comprised of approximately 26,118 acres, as generally depicted on a map entitled "Horseshoe/Labyrinth Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Horseshoe/Labyrinth Canyon Wilderness.

(4) Certain lands in the Crack Canyon Wilderness Study Area comprised of approximately 20, 293 acres, as generally depicted on a map entitled "Crack Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Crack Canyon Wilderness.

(5) Certain lands in the Muddy Creek Wilderness Study Area comprised of approximately 37,245 acres, as generally depicted on a map entitled "Muddy Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Muddy Creek Wilderness.

(6) Certain lands in the Sids Mountain Wilderness Study Area comprised of approximately 44,308 acres, as generally depicted on a map entitled "Sids Mountain Proposed Wilderness" and dated December 12, 1995, and which shall be known as the Sids Mountain Wilderness.

(7) Certain lands in the Mexican Mountain Wilderness Study Area comprised of approximately 33,558 acres, as generally depicted on a map entitled "Mexican Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mexican Mountain Wilderness.

(8) Certain lands in the Phipps-Death Hollow Wilderness Study Area comprised of approximately 41,445 acres, as generally depicted on a map entitled "Phipps-Death Hollow Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Phipps-Death Hollow Wilderness.

(9) Certain lands in the Steep Creek Wilderness Study Area comprised of approximately 21,277 acres, as generally depicted on a map entitled "Steep Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Steep Creek Wilderness.

(10) Certain lands in the North Escalante Canyons/The Gulch Wilderness Study Area comprised of approximately 101,896 acres, as generally depicted on a map entitled "North Escalante Canyons/The Gulch Proposed Wilderness" and dated October 3, 1995, and which shall be known as the North Escalante Canyons/The Gulch Creek Wilderness.

(11) Certain lands in the Scorpion Wilderness Study Area comprised of approximately 16,693 acres, as generally depicted on a map entitled "Scorpion Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Scorpion Wilderness.

(12) Certain lands in the Mt. Ellen-Blue Hills Wilderness Study Area comprised of approximately 65,355 acres, as generally depicted on a map entitled "Mt. Ellen-Blue Hills Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Ellen-Blue Hills Wilderness.

(13) Certain lands in the Bull Mountain Wilderness Study Area comprised of approximately 11,424 acres, as generally depicted on a map entitled "Bull Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Bull Mountain Wilderness.

(14) Certain lands in the Fiddler Butte Wilderness Study Area comprised of approximately 22,180 acres, as generally depicted on a map entitled "Fiddler Butte Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fiddler Butte Mountain Wilderness.

(15) Certain lands in the Mt. Pennell Wilderness Study Area comprised of approximately 18,619 acres, as generally depicted on a map entitled "Mt. Pennell Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Pennell Wilderness.

(16) Certain lands in the Mt. Hillers Wilderness Study Area comprised of approximately 14,746 acres, as generally depicted on a map entitled "Mt. Hillers Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mt. Hillers Wilderness.

(17) Certain lands in the Little Rockies Wilderness Study Area comprised of approximately 49,001 acres, as generally depicted on a map entitled "Little Rockies Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Little Rockies Wilderness.

(18) Certain lands in the Mill Creek Canyon Wilderness Study Area comprised of approximately 7,846 acres, as generally depicted on a map entitled "Mill Creek Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mill Creek Canyon Wilderness.

(19) Certain lands in the Negro Bill Canyon Wilderness Study Area comprised of approximately 8,321 acres, as generally depicted on a map entitled "Negro Bill Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Negro Bill Canyon Wilderness.

(20) Certain lands in the Floy Canyon Wilderness Study Area comprised of approximately 28,794 acres, as generally depicted on a map entitled "Floy Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Floy Canyon Wilderness.

(21) Certain lands in the Coal Canyon Wilderness Study Area and the Spruce Canyon

Wilderness Study Area comprised of approximately 56,673 acres, as generally depicted on a map entitled "Coal/Spruce Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Coal/Spruce Canyon Wilderness.

(22) Certain lands in the Flume Canyon Wilderness Study Area comprised of approximately 47,247 acres, as generally depicted on a map entitled "Flume Canyon Proposed Wilderness" and dated December 12, 1995, and which shall be known as the Flume Canyon Wilderness.

(23) Certain lands in the Westwater Canyon Wilderness Study Area comprised of approximately 26,657 acres, as generally depicted on a map entitled "Westwater Canyon Proposed Wilderness" and dated December 12, 1995, and which shall be known as the Westwater Canyon Wilderness.

(24) Certain lands in the Beaver Creek Wilderness Study Area comprised of approximately 24,620 acres, as generally depicted on a map entitled "Beaver Creek Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Beaver Creek Wilderness.

(25) Certain lands in the Fish Springs Wilderness Study Area comprised of approximately 36,142 acres, as generally depicted on a map entitled "Fish Springs Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fish Springs Wilderness.

(26) Certain lands in the Swasey Mountain Wilderness Study Area comprised of approximately 34,803 acres, as generally depicted on a map entitled "Swasey Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Swasey Mountain Wilderness.

(27) Certain lands in the Parunuweap Canyon Wilderness Study Area comprised of approximately 19,107 acres, as generally depicted on a map entitled "Parunuweap Canyon Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Parunuweap Wilderness.

(28) Certain lands in the Canaan Mountain Wilderness Study Area comprised of approximately 32,395 acres, as generally depicted on a map entitled "Canaan Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Canaan Mountain Wilderness.

(29) Certain lands in the Paria-Hackberry Wilderness Study Area comprised of approximately 94,805 acres, as generally depicted on a map entitled "Paria-Hackberry Proposed Wilderness" and dated December 3, 1995, and which shall be known as the Paria-Hackberry Wilderness.

(30) Certain lands in the Escalante Canyon Tract 5 Wilderness Study Area comprised of approximately 756 acres, as generally depicted on a map entitled "Escalante Canyon Tract 5 Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Escalante Canyon Tract 5 Wilderness.

(31) Certain lands in the Fifty Mile Mountain Wilderness Study Area comprised of approximately 125,823 acres, as generally depicted on a map entitled "Fifty Mile Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Fifty Mile Mountain Wilderness.

(32) Certain lands in the Howell Peak Wilderness comprised of approximately 14,518 acres, as generally depicted on a map entitled "Howell Peak Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Howell Peak Wilderness.

(33) Certain lands in the Notch Peak Wilderness Study Area comprised of approximately 17,678 acres, as generally depicted on a map entitled "Notch Peak Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Notch Peak Wilderness.

(34) Certain lands in the Wah Wah Mountains Wilderness Study Area comprised of approximately 41,311 acres, as generally depicted on a map entitled "Wah Wah Mountains Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Wah Wah Wilderness.

(35) Certain lands in the Mancos Mesa Wilderness Study Area comprised of approximately 48,269 acres, as generally depicted on a map entitled "Mancos Mesa Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Mancos Mesa Wilderness.

(36) Certain lands in the Grand Gulch Wilderness Study Area comprised of approximately 52,821 acres, as generally depicted on a map entitled "Grand Gulch Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Grand Gulch Wilderness.

(37) Certain lands in the Dark Canyon Wilderness Study Area comprised of approximately 67,099 acres, as generally depicted on a map entitled "Dark Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Dark Canyon Wilderness.

(38) Certain lands in the Butler Wash Wilderness Study Area comprised of approximately 24,888 acres, as generally depicted on a map entitled "Butler Wash Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Butler Wash Wilderness.

(39) Certain lands in the Indian Creek Wilderness Study Area comprised of approximately 6,742 acres, as generally depicted on a map entitled "Indian Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Indian Creek Wilderness.

(40) Certain lands in the Behind the Rocks Wilderness Study Area comprised of approximately 14,169 acres, as generally depicted on a map entitled "Behind the Rocks Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Behind the Rocks Wilderness.

(41) Certain lands in the Cedar Mountains Wilderness Study Area comprised of approximately 325,647 acres, as generally depicted on a map entitled "Cedar Mountains Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Cedar Mountains Wilderness.

(42) Certain lands in the Deep Creek Mountains Wilderness Study Area comprised of approximately 70,735 acres, as generally depicted on a map entitled "Deep Creek Mountains Proposed Wilderness" and dated October 3, 1995, and which shall be known as the Deep Creek Mountains Wilderness.

(43) Certain lands in the Nutters Hole Wilderness Study Area comprised of approximately 3,688 acres, as generally depicted on a map entitled "Nutters Hole Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Nutters Hole Wilderness.

(44) Certain lands in the Cougar Canyon Wilderness Study Area comprised of approximately 4,370 acres, including those lands located in the State of Nevada, as generally depicted on a map entitled "Cougar Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Cougar Canyon Wilderness.

(45) Certain lands in the Red Mountain Wilderness Study Area comprised of approximately 9,216 acres, as generally depicted on a map entitled "Red Mountain Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Red Mountain Wilderness.

(46) Certain lands in the Deep Creek Wilderness Study Area comprised of approximately 3,063 acres, as generally depicted on a map entitled "Deep Creek Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Deep Creek Wilderness.

(47) Certain lands in the Dirty Devil Wilderness Study Area comprised of approximately 75,301 acres, as generally depicted on a map entitled "Dirty Devil Proposed Wilderness" and dated September 18, 1995, and which shall be known as the Dirty Devil Wilderness.

(48) Certain lands in the Horseshoe Canyon South Wilderness Study Area comprised of approximately 11,393 acres, as generally depicted on a map entitled "Horseshoe Canyon South Proposed Wilderness" and dated September 18, 1995, and which shall be known as the 49 Wilderness.

(49) Certain lands in the French Spring-Happy Canyon Wilderness Study Area comprised of approximately 13,766 acres, as generally depicted on a map entitled "French Spring-Happy Canyon Proposed Wilderness" and dated September 18, 1995, and which shall be known as the French Spring-Happy Canyon Wilderness.

(50) Certain lands in the Road Canyon Wilderness Study Area comprised of approximately 33,783 acres, as generally depicted on a map entitled "Grand Gulch Proposed Wilderness" and dated December 8, 1995, and which shall be known as the Road Canyon Wilderness.

(51) Certain lands in the Fish & Owl Creek Wilderness Study Area comprised of approximately 16,562 acres, as generally depicted on a map entitled "Grand Gulch Proposed Wilderness" and dated December 8, 1995, and which shall be known as the Fish & Owl Creek Wilderness.

(52) Certain lands in the Turtle Canyon Wilderness Study Area comprised of approximately 27,480 acres, as generally depicted on a map entitled "Desolation Canyon Proposed Wilderness" and dated December 3, 1995, and which shall be known as the Turtle Canyon Wilderness.

(53) Certain lands in the The Watchman Wilderness Study Area comprised of approximately 664 acres, as generally depicted on a map entitled "The Watchman Proposed Wilderness" and dated December 8, 1995, and which shall be known as the The Watchman Wilderness.

(b) MAP AND DESCRIPTION.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior (hereafter in this Title referred to as the "Secretary") shall file a map and a legal description of each area designated as wilderness by subsection (a) with the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Each such map and description shall have the same force and effect as if included in this Title, except that corrections of clerical and typographical errors in each such map and legal description may be made. Each such map and legal description shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management, and the office of the State Director of the Bureau of Land Management in the State of Utah, Department of the Interior.

SECTION 2002. ADMINISTRATION OF WILDERNESS AREAS.

(a) IN GENERAL.—Subject to valid existing rights, each area designated by this Title as wilderness shall be administered by the Secretary in accordance with this Title, the Wilderness Act (16 U.S.C. 1131 et seq.), and section 603 of the Federal Land Policy and Management Act of 1976. Any valid existing rights recognized by this Title shall be determined under applicable laws, including the land use planning process under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712). Any lands or interest in lands within the boundaries of an area designated as wilderness by this Title that is acquired by the United States after the date of enactment of this Act shall be added to and administered as part of the wilderness area within which such lands or interests in lands are located.

(b) MANAGEMENT PLANS.—The Secretary shall, within five years after the date of the enactment of this Act, prepare plans to manage the areas designated by this Title as wilderness.

(c) LIVESTOCK.—(1) Grazing of livestock in areas designated as wilderness by this Title, where established prior to the date of the enactment of this Act, shall—

(A) continue and not be curtailed or phased out due to wilderness designation or management; and

(B) be administered in accordance with section 4(d)(4) of the Wilderness Act (16 U.S.C. 1133(d)(4)) and the guidelines set forth in House Report 9601126.

(2) Wilderness shall not be used as a suitability criteria for managing any grazing allotment that is subject to paragraph (1).

(d) STATE FISH AND WILDLIFE.—In accordance with section 4(d)(7) of the Wilderness Act (16 U.S.C. 1131(d)(7)), nothing in this Title shall be construed as affecting the jurisdiction or responsibilities of the State of Utah with respect to fish and wildlife management activities, including water development for fish and wildlife purposes, predator control, transplanting animals, stocking fish, hunting, fishing and trapping.

(e) PROHIBITION OF BUFFER ZONES.—The Congress does not intend that designation of an area as wilderness by this Title lead to the creation of protective perimeters or buffer zones around the area. The fact that nonwilderness activities or uses can be seen, heard, or smelled from areas within a wilderness shall not preclude such activities or uses up to the boundary of the wilderness area.

(f) OIL SHALE RESERVE NUMBER TWO.—The area know as "Oil Shale Reserve Number Two" within Desolation Canyon Wilderness (as designated by section 2001(a)(1)), located in Carbon County and Uintah County, Utah, shall not be reserved for oil shale purposes after the date of the enactment of this Title and shall be under the sole jurisdiction of and managed by the Bureau of Land Management.

(g) ROADS AND RIGHTS-OF-WAY AS BOUNDARIES.—Unless depicted otherwise on a map referred to by this Title, where roads form the boundaries of the areas designated as wilderness by this Title, the wilderness boundary shall be set back from the center line of the road as follows:

(1) 300 feet for high standard roads such as paved highways.

(2) 100 feet for roads equivalent to high standard logging roads.

(3) 30 feet for all unimproved roads not referred to in paragraphs (1) or (2).

(h) CHERRY-STEMMED ROADS.—(1) The Secretary may not close or limit access to any non-Federal road that is bounded on one or both sides by an area designated as wilderness by this Title, as generally depicted on a map referred to in section 2002, without first obtaining written consent from the State of Utah or the political subdivision thereof with general jurisdiction over roads in the area.

(2) Any road described in paragraph (1) may continue to be maintained and repaired by any such entity.

(i) ACCESS.—Reasonable access, including the use of motorized equipment where necessary or customarily or historically employed, shall be allowed on routes within the areas designated wilderness by this Title in existence as of the date of enactment of this Act for the exercise of valid-existing rights, including, but not limited to, access to existing water diversion, carriage, storage and ancillary facilities and livestock grazing improvements and structures. Existing routes as of such date may be maintained and repaired as necessary to maintain their customary or historic uses.

(j) LAND ACQUISITION BY EXCHANGE OR PURCHASE.—The Secretary may offer to acquire from nongovernmental entities lands and interests in lands located within or adjacent to areas designated as wilderness by this Title. Lands may be acquired under this subsection only by exchange, donation, or purchase from willing sellers.

(k) MOTORBOATS.—As provided in section 4(d)(1) of the Wilderness Act, within areas designated as wilderness by this Title, the use of motorboats, where such use was established as of the date of enactment of this Act, may be permitted to continue subject to such restrictions as the Secretary deems desirable.

(l) DISCLAIMER.—Nothing in this Title shall be construed as establishing a precedent with regard to any future wilderness designation, nor shall it constitute an interpretation of any other Act or any wilderness designation made pursuant thereto.

SECTION 2003. WATER RIGHTS.

(a) NO FEDERAL RESERVATION.—Nothing in this Act or any other Act of Congress shall constitute or be construed to constitute either an express or implied Federal reservation of water or water rights for any purpose arising from the designation of areas as wilderness by this Title.

(b) ACQUISITION AND EXERCISE OF WATER RIGHTS UNDER UTAH LAW.—The United States may acquire and exercise such water rights as it deems necessary to carry out its responsibilities on any lands designated as wilderness by this Title pursuant to the substantive and procedural requirements of the State of Utah. Nothing in this Title shall be construed to authorize the use of eminent domain by the United States to acquire water rights for such lands. Within areas designated as wilderness by this Title, all rights to water granted under the laws of the State of Utah may be exercised in accordance with the substantive and procedural requirements of the State of Utah.

(c) EXERCISE OF WATER RIGHTS GENERALLY UNDER UTAH LAWS.—Nothing in this Title shall be construed to limit the exercise of water rights as provided under Utah State laws.

(d) CERTAIN FACILITIES NOT AFFECTED.—Nothing in this Title shall affect the capacity, operation, maintenance, repair, modification, or replacement of municipal, agricultural, livestock, or wildlife water facilities in existence as of the date of enactment of this Act within the boundaries of areas designated as wilderness by this Title.

(e) WATER RESOURCE PROJECTS.—Nothing in this Title or the Wilderness Act shall be construed to limit or to be a consideration in Federal approvals or denials for access to or use of the Federal lands outside areas designated wilderness by this Title for development and operation of water resource projects, including (but not limited to) reservoir projects. Nothing in this subsection shall create a right of access through a wilderness area designated pursuant to this title for the purposes of such projects.

SECTION 2004. CULTURAL, ARCHAEOLOGICAL, AND PALEONTOLOGICAL RESOURCES.

The Secretary is responsible for the protection (including through the use of mechanical means) and interpretation (including through the use of permanent improvements) of cultural, archaeological, and paleontological resources located within areas designated as wilderness by this Title.

SECTION 2005. NATIVE AMERICAN CULTURAL AND RELIGIOUS USES.

In recognition of the past use of portions of the areas designated as wilderness by this Title by Native Americans for traditional cultural and religious purposes, the Secretary shall assure nonexclusive access from time to time to those sites by Native Americans for such purposes, including (but not limited to) wood gathering for personal use of collecting plants or herbs for religious or medicinal purposes. Such access shall be consistent with the purpose and intent of the Act of August 11, 1978 (42 U.S.C. 1996; commonly referred to as the "American Indian Religious Freedom Act").

SECTION 2006. MILITARY OVERFLIGHTS.

(a) OVERFLIGHTS NOT PRECLUDED.—Nothing in this Title, the Wilderness Act, or other land management laws generally applicable to the new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Title, shall restrict or preclude overflights of military aircraft over such areas, including military overflights that can be seen or heard within such units.

(b) SPECIAL USE AIRSPACE.—Nothing in this Title, the Wilderness Act, or other land management laws generally applicable to the new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Title, shall restrict or preclude the designation of new units of special use airspace or the use or establishment of military flight training rules over such areas.

(c) COMMUNICATIONS OR TRACKING SYSTEMS.—Nothing in this Title, the Wilderness Act, or other land management laws generally applicable to new areas of the Wilderness Preservation System (or any additions to existing areas) designated by this Title shall be construed to require the removal of existing communication or electronic tracking systems from areas designated as wilderness by this Title, to prohibit the maintenance of existing communications or electronic tracking systems within such new wilderness areas, or to prevent the installation of portable electronic communication or tracking systems in support of military operations so long as installation, maintenance, and removal of such systems does not require construction of temporary or permanent roads.

SECTION 2007. AIR QUALITY.

(a) IN GENERAL.—The Congress does not intend that designation of wilderness areas in the State of Utah by this Title lead to reclassification of any airshed to a more stringent Prevented of Significant Deterioration (PSD) classification.

(b) ROLE OF STATE.—Air quality reclassification for the wilderness areas established by this Title shall be the prerogative of the State of Utah. All areas designated as wilderness by this Title are and shall continue to be managed as PSD Class II under the Clean Air Act unless they are reclassified by the State of Utah in accordance with the Clean Air Act.

(c) INDUSTRIAL FACILITIES.—Nothing in this Title shall be construed to restrict or preclude construction, operation, or expansion of industrial facilities outside of the areas designated as wilderness by this Title, including the Hunter Power Facilities, the Huntington Power Facilities, the Intermountain Power Facilities, the Bonanza Power Facilities, the Continental Lime Facilities, and the Brush Wellman Facilities. The permitting and operation of such projects and facilities shall be subject to applicable laws and regulations.

SECTION 2008. WILDERNESS RELEASE.

(a) FINDING.—The Congress finds and directs that all public lands in the State of Utah administered by the Bureau of Land Management have been adequately studied for wilderness designation pursuant to sections 202 and 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712 and 1782).

(b) RELEASE.—Except as provided in subsection (c), any public lands administered by the Bureau of Land Management in the State of Utah not designated wilderness by this Title are no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1783(c)). Such lands shall be managed for the full range of uses as defined in section 103(c) of said Act (43 U.S.C. 1702(c)) and in accordance with land management plans adopted pursuant to section 202 of such Act (43 U.S.C. 1712). Such lands shall not be managed for the purpose of protecting their suitability for wilderness designation.

(c) CONTINUING WILDERNESS STUDY AREAS STATUS.—The following wilderness study areas which are under study status by States adjacent to the State of Utah shall continue to be subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)):

(1) Bull Canyon: UT00800419/CO00100001.

(2) Wrigley Mesa/Jones Canyon/Black Ridge Canyon West; UT00600116/117/CO00700113A.

(3) Squaw/Papoose Canyon; UT00600227/CO00300265A.

(4) Cross Canyon; UT00600229/CO00300265.

SECTION 2009. EXCHANGE RELATING TO SCHOOL AND INSTITUTIONAL TRUST LANDS.

(a) FINDINGS.—The Congress finds that—

(1) approximately 242,000 acres of school and institutional trust lands are located within or adjacent to areas designated as wilderness by this Title, including 15,000 acres of mineral estate;

(2) such lands were originally granted to the State of Utah for the purpose of generating support for the public schools through the development of natural resources and other methods; and

(3) it is in the interest of the State of Utah and the United States for such lands to be exchanged for interests in Federal lands located outside of wilderness areas to accomplish this purpose.

(b) EXCHANGE.—The Secretary is authorized to accept on behalf of the United States title to all school and institutional trust lands owned by the State of Utah described in Subsection (c)(1) that may be exchanged for lands or interests therein owned by the United States described in Subsection (c)(2) as provided in this section. The exchange of lands under this section shall be subject to valid existing rights, including (but not limited to) the right of the State of Utah to receive, and distribute pursuant to state law, 50 percent of the revenue, less a reasonable administrative fee, from the production of minerals that are leased or would have been subject to leasing pursuant to the Mineral Leasing Act (30 U.S.C. 191 et seq).

(c) STATE AND FEDERAL EXCHANGE LANDS DESCRIBED.—

(1) SCHOOL AND INSTITUTIONAL TRUST LANDS.—The school and institutional trust lands referred to in this section are those lands generally depicted as "Surface and Mineral Offering" on the map entitled "Proposed Land Exchange Utah (H.R. 1745)" and dated December 6, 1995, which—

(A) are located within or adjacent to areas designated by this Title as wilderness; and

(B) were granted by the United States in the Utah Enabling Act to the State of Utah in trust and other lands which under State law must be managed for the benefit of the public school system or the institutions of the State which are designated by the Utah Enabling Act.

(2) FEDERAL LANDS.—The Federal lands referred to in this section are the lands located in the State of Utah which are generally depicted as "Federal Exchange Lands" on the map referred to in paragraph (1).

(d)(1) LAND EXCHANGE FOR EQUAL VALUE.—The lands exchanged pursuant to this section shall be of approximate equal value as determined by nationally recognized appraisal standards.

(2) PARTIAL EXCHANGES.—If the State of Utah so desires, it may identify from time to time by notice to the Secretary portions of the lands described in subsection (c)(1) which it is prepared to exchange together with a list of the portion of the lands in subsection (c)(2) which it intends to acquire in return. In making its selections, the state shall work with the Secretary to minimize or eliminate the retention of federal inholdings or other unmanageable federal parcels as a consequence of the transfer of federal lands, or interests therein, to the state. Upon receipt of such notice, the Secretary shall immediately proceed to conduct the necessary valuations. The valuations shall be completed no later than six months following the state's notice. The Secretary shall then enter into good faith negotiations with the state concerning the value of the lands, or interests therein, involved in each proposed partial exchange. If the value of the lands or interests therein are not approximately equal, the Secretary and the State of Utah shall either agree to modify the lands to be exchanged within the partial exchange or shall provide for a cash equalization payment to equalize the value. Any cash equalization payment shall not exceed 25 percent of the value of the land to be conveyed. The State shall submit all notices of exchange within four years of the date of enactment of this Act.

(3)(i) DEADLINE AND DISPUTE RESOLUTION.—If, after one year from the date of enactment of this Act, the Secretary and the State of Utah have not agreed upon the final terms of some or all of the individual exchanges initiated by the state pursuant to subsection (d)(2), including the value of the lands involved, notwithstanding any other provisions of law, the United States District Court for the District of Utah, Central Division, shall have jurisdiction to hear, determine, and render judgment on the value of any and all lands, or interests therein, involved in the exchange.

(ii) No action provided for in this subsection may be filed with the court sooner than one year and later than five years after the date of enactment of this Act. Any decision of the District Court under this section may be appealed in accordance with the applicable laws and rules.

(4) TRANSFER OF TITLE.—The transfer of lands or cash equalizations shall take place within sixty days following agreement on an individual partial exchange by the Secretary and the Governor of the State of Utah, or acceptance by the governor of the terms of an appropriate order of judgment entered by the district court affecting that partial exchange. The Secretary and the State shall each convey, subject to valid existing rights, all right, title and interest to the lands or interests therein involved in each partial exchange.

(e) DUTIES OF THE PARTIES AND OTHER PROVISIONS RELATING TO THE EXCHANGE.—

(1) MAP AND LEGAL DESCRIPTION.—The State of Utah and the Secretary shall each provide to the other legal descriptions of the lands under their respective jurisdictions which are to be exchanged under this section. The map referred to in subsection 9c)(1) and the legal descriptions provided under this subsection shall be on file and available for public inspection in the office of the Director of the Bureau of Land Management and the office of the State Director of the Bureau of Land Management in the State of Utah, Department of the Interior.

(2) HAZARDOUS MATERIALS.—The Secretary and the State of Utah shall inspect all pertinent records and shall conduct a physical inspection of the lands to be exchanged pursuant to this Title for the presence of any hazardous materials as presently defined by applicable law. The results of those inspections shall be made available to the parties. The responsibility for costs of remedial action related to such materials shall be borne by those entities responsible under existing law.

(3) PROVISIONS RELATING TO FEDERAL LANDS.—(A) The enactment of this Act shall be construed as satisfying the provisions of section 206(a) of the Federal Land Policy and Management Act of 1976 requiring that exchanges of lands be in the public interest.

(B) The transfer of lands and related activities required of the Secretary under this section shall not be subject to the National Environmental Policy Act of 1969.

(C) The value of Federal lands transferred to the State under this section shall be adjusted to reflect the right of the State of Utah under Federal law to share the revenues from such Federal lands, and the conveyances under this section to the State of Utah shall be subject to such revenue sharing obligations as a valid existing right.

(D) Subject to valid existing rights, the Federal lands described in subsection (c)(2) are hereby withdrawn from disposition under the public land laws and from location, entry, and patent under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, from operation of the Geothermal Steam Act of 1970, and from the operation of the Act of July 31, 1947, commonly known as the Materials Act of 1947 (30 U.S.C. 601 and following). The Secretary shall have the authority to extend any existing leases on such Federal lands prior to consummation of the exchange.

(4) PROCEEDS FROM LEASE AND PRODUCTION OF MINERALS AND SALES AND HARVESTS OF TIMBER.—

(A) COLLECTION AND DISTRIBUTION.—The State of Utah, in connection with the management of the school and institutional trust lands described in subsections (c)(2) and (d), shall upon conveyance of such lands, collect and distribute all proceeds from the lease and production of minerals and the sale and harvest of timber on such lands as required by law until the State, as trustee, no longer owns the estate from which the proceeds are produced.

(B) DISPUTES.—A dispute concerning the collection and distribution of proceeds under subparagraph (A) shall be resolved in accordance with State law.

(f) ADMINISTRATION OF LANDS ACQUIRED BY THE UNITED STATES.—The lands and interests in lands acquired by the United States under this section shall be added to and administered as part of areas of the public lands, as indicated on the maps referred to in this section or in section 2002, as applicable.

SECTION 2010. LAND APPRAISAL.

Lands and interests in lands acquired pursuant to this title shall be appraised without regard to the presence of a species listed as threatened or endangered pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SECTION 2011. SAND HOLLOW LAND EXCHANGE.

(a) DEFINITIONS.—As used in this section:

(1) DISTRICT.—The term "District" means the Water Conservancy District of Washington, County, Utah.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) BULLOCH SITE.—The term "Bulloch Site" means the lands located in Kane County, Utah, adjacent to Zion National Park, comprised of approximately 1,380 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(4) SAND HOLLOW SITE.—The term "Sand Hollow Site" means the lands located in Washington County, Utah, comprised of approximately 3,000 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(5) QUAIL CREEK PIPELINE.—The term "Quail Creek Pipeline" means the lands located in Washington County, Utah, comprised of approximately 40 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(6) QUAIL CREEK RESERVOIR.—The term "Quail Creek Reservoir" means the lands located in Washington County, Utah, comprised of approximately 480.5 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(7) SMITH PROPERTY.—The term "Smith Property" means the lands located in Washington County, Utah, comprised of approximately 1,550 acres, as generally depicted on a map entitled "Washington County Water Conservancy District Exchange Proposal" and dated July 24, 1995.

(b) EXCHANGE.—

(1) IN GENERAL.—Subject to the provisions of this Title, if within 18 months after the date of the enactment of this Act, the Water Conservancy District of Washington County, Utah, offers to transfer to the United States all right, title, and interest of the District in and to the Bulloch Site, the Secretary of the Interior shall, in exchange, transfer to the District all right, title, and interest of the United States in and to the Sand Hollow Site, the Quail Creek Pipeline and Quail Creek Reservoir, subject to valid existing rights.

(2) WATER RIGHTS ASSOCIATED WITH THE BULLOCH SITE.—The water rights associated with the Bulloch Site shall not be included in the transfer under paragraph (1) but shall be subject to an agreement between the District and the Secretary that the water remain in the Virgin River as an instream flow from the Bulloch Site through Zion National Park to the diversion point of the District at the Quail Creek Reservoir.

(3) WITHDRAWAL OF MINERAL INTERESTS.—Subject to valid existing rights, the mineral interests underlying the Sand Hollow Site, the Quail Creek Reservoir, and the Quail Creek Pipeline are hereby withdrawn from disposition under the public land laws and from location, entry, and patent under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, from the operation of the Geothermal Steam Act of 1970, and from the operation of the Act of July 31, 1947, commonly known as the "Materials Act of 1947" (30 U.S.C. 601 et seq.).

(4) GRAZING.—The exchange of lands under paragraph (1) shall be subject to agreement by the District to continue to permit the grazing of domestic livestock on the Sand Hollow Site under the terms and conditions of existing Federal grazing leases or permits, except that the District, upon terminating any such lease or permit, shall fully compensate the holder of the terminated lease or permit.

(c) EQUALIZATION OF VALUES.—The value of the lands transferred out of Federal ownership under subsection (b) either shall be equal to the value of the lands received by the Secretary under subsection (c) or, if not, shall be equalized by—

(1) to the extent possible, transfer of all right, title, and interest of the District in and to lands in Washington County, Utah, and water rights of the District associated thereto, which are within the area providing habitat for the desert tortoise, as determined by the Director of the Bureau of Land Management;

(2) transfer of all right, title, and interest of the District in and to lands in the Smith Site and water rights of the District associated thereto; and

(3) the payment of money to the Secretary, to the extent that lands and rights transferred under paragraphs (1) and (2) are not sufficient to equalize the values of the lands exchanged under subsection (b).

(d) MANAGEMENT OF LANDS ACQUIRED BY UNITED STATES.—Lands acquired by the Secretary under this section shall be administered by the Secretary, acting through the Director of the Bureau of Land Management, in accordance with the provisions of law generally applicable to the public lands, including the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(e) NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—The exchange of lands under this section is not subject to section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

TITLE XXI—FORT CARSON—PINON CANYON MILITARY LANDS WITHDRAWAL

SECTION 2101. WITHDRAWAL AND RESERVATION OF LANDS AT FORT CARSON MILITARY RESERVATION.

(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this Title, the lands at the Fort Carson Military Reservation that are described in subsection (c) are hereby withdrawn from all forms of appropriations under the public land laws, including the mining laws, the mineral and geothermal leasing laws, and the mineral materials disposal laws.

(b) RESERVATION.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—

(1) for military maneuvering, training, and weapons firing; and

(2) for other defense related purposes consistent with the uses specified in paragraph (1).

(c) LAND DESCRIPTION.—The lands referred to in subsection (a) comprise approximately 3,133.02 acres of public land and approximately 11,415.16 acres of federally-owned minerals in El Paso, Pueblo, and Fremont Counties, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Base", dated March 2, 1992, and filed in accordance with section 2003.

SECTION 2102. WITHDRAWAL AND RESERVATION OF LANDS AT PINON CANYON MANEUVER SITE.

(a) WITHDRAWAL.—Subject to valid existing rights and except as otherwise provided in this title, the lands at the Pinon Canyon Maneuver Site that are described in subsection (c) are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, the mineral and geothermal leasing laws, and the mineral materials disposal laws.

(b) RESERVATION.—The lands withdrawn under subsection (a) are reserved for use by the Secretary of the Army—

(1) for military maneuvering and training; and

(2) for other defense related purposes consistent with the uses specified in paragraph (1).

(c) LAND DESCRIPTION.—The lands referred to in subsection (a) comprise approximately 2,517.12 acres of public lands and approximately 130,139 acres of federally-owned minerals in Los Animas County, Colorado, as generally depicted on the map entitled "Fort Carson Proposed Withdrawal—Fort Carson Maneuver Area—Pinon Canyon Site", dated March 2, 1992, and filed in accordance with section 2003.

SECTION 2103. MAPS AND LEGAL DESCRIPTIONS.

(a) PREPARATION.—As soon as practicable after the date of enactment of this Title, the Secretary of the Interior shall publish in the Federal Register a notice containing the legal description of the lands withdrawn and reserved by this Act.

(b) LEGAL EFFECT.—Such maps and legal descriptions shall have the same force and effect as if they were included in this Title, except that the Secretary of the Interior may correct clerical and typographical errors in such maps and legal descriptions.

(c) LOCATION OF MAPS.—Copies of such maps and legal descriptions shall be available for public inspection in the offices of the Colorado State Director and the Canon City District Manager of the Bureau of Land Management, and the Commander, Fort Carson, Colorado.

(d) COSTS.—The Secretary of the Army shall reimburse the Secretary of the Interior for the costs of implementing this section.

SECTION 2104. MANAGEMENT OF WITHDRAWN LANDS.

(a) MANAGEMENT GUIDELINES.—(1) Except as provided in section 2005, during the period of withdrawal the Secretary of the Army shall manage for military purposes the lands covered by this Title and may authorize use of such lands covered by the other military departments and agencies of the Department of Defense, and the National Guard, as appropriate.

(2) When military operations, public safety, or national security, as determined by

the Secretary of the Army, require the closure of roads or trails on the lands withdrawn by this Title commonly in public use, the Secretary of the Army is authorized to take such action, except that such closures shall be limited to the minimum areas and periods required for the purposes specified in this subsection. Appropriate warning notices shall be kept posted during closures.

(3) The Secretary of the Army shall take necessary precautions to prevent and suppress brush and range fires occurring within and outside the lands as a result of military activities and may seek assistance from the Bureau of Land Management in suppressing such fires. The memorandum of understanding required by this subsection (c) shall provide for Bureau of Land Management assistance in the suppression of such fires, and for the transfer of funds from the Department of the Army to the Bureau of Land Management as compensation for such assistance.

(b) MANAGEMENT PLAN.—Not later than 5 years after the date of enactment of this Act, the Secretary of the Army, with the concurrence of the Secretary of the Interior, shall develop a plan for the management of acquired lands and lands withdrawn under sections 2001 and 2002 of this Title for the period of the withdrawal. Such plan shall—

(1) be consistent with applicable law;

(2) include such provisions as may be necessary for proper resource management and protection of the natural, cultural, and other resources and values of such lands; and

(3) identify those withdrawn and acquired lands, if any, which are to be open to mining, or mineral or geothermal leasing, including mineral materials disposal.

(c) IMPLEMENTATION OF MANAGEMENT PLAN.—(1) The Secretary of the Army and the Secretary of the Interior shall enter into a memorandum of understanding to implement the management plan described in subsection (b).

(2) The duration of any such memorandum of understanding shall be the same as the period of withdrawal under section 2007.

(3) The memorandum of understanding may be amended by agreement of both Secretaries.

(d) USE OF CERTAIN RESOURCES.—Subject to valid existing rights, the Secretary of the Army is authorized to utilize sand, gravel, or similar mineral or mineral material resources from lands withdrawn by this Title, when the use of such resources is required for construction needs of the Fort Carson Military Reservation or Pinon Canyon Maneuver Site.

SECTION 2105. MANAGEMENT OF WITHDRAWN AND ACQUIRED MINERAL RESOURCES.

Except as provided in section 2004(d) of this title, the Secretary of the Interior shall manage all withdrawn and acquired mineral resources within the boundaries of the Fort Carson Military Reservation and Pinon Canyon Maneuver Site in accordance with section 12 of the Military Lands Withdrawal Act of 1986 (Public Law 99-606; 100 Stat. 3466), as applicable.

SECTION 2106. HUNTING, FISHING, AND TRAPPING.

All hunting, fishing and trapping on the lands withdrawn and reserved by this Title shall be conducted in accordance with section 2671 of title 10, United States Code.

SECTION 2107. TERMINATION OF WITHDRAWAL AND RESERVATION AND EFFECT OF CONTAMINATION.

(a) TERMINATION DATE.—The withdrawal and reservation established by this Title shall terminate 15 years after the date of the enactment of this Act.

(b) DETERMINATION OF CONTINUING MILITARY NEED.—(1) At least three years prior to the termination under subsection (a) of the withdrawal and reservation established by this Title, the Secretary of the Army shall advise the Secretary of the Interior as to whether or not the Department of the Army will have a continuing military need for any of the lands after the termination date.

(2) If the Secretary of the Army concludes under paragraph (1) that there will be a continuing military need for any of the lands after the termination date established by subsection (a), the Secretary of the Army, in accordance with applicable law, shall evaluate the environmental effects of renewal of such withdrawal and reservation, shall hold at least one public hearing in Colorado concerning such evaluation, and shall thereafter file an application for extension of the withdrawal and reservation of such lands in accordance with the regulations and procedures of the Department of the Interior applicable to the extension of withdrawals for military uses. The Secretary of the Interior shall notify the Congress concerning such filing.

(3) If the Secretary of the Army concludes under paragraph (1) that prior to the termination date established by subsection (a), there will be no military need for all or any of the lands withdrawn and reserved by this Act, or if, during the period of withdrawal, the Secretary of the Army shall file a notice of intention to relinquish with the Secretary of the Interior.

(c) DETERMINATION OF CONTAMINATION.—Prior to the filing of a notice of intention to relinquish pursuant to subsection (b)(3), the Secretary of the Army shall prepare a written determination as to whether and to what extent the lands are contaminated with explosive, toxic, or other hazardous materials. A copy of the determination made by the Secretary of the Army shall be supplied with the notice of intention to relinquish. Copies of both the notice of intention to relinquish and the determination concerning the contaminated state of the lands shall be published in the Federal Register by the Secretary of the Interior.

(d) EFFECT OF CONTAMINATION.—(1) If any land which is the subject of a notice of intention to relinquish under subsection (b)(3) is contaminated, and the Secretary of the Interior, in consultation with the Secretary of the Army, determines that decontamination is practicable and economically feasible, taking into consideration the potential future use and value of the land, and that upon decontamination, the land could be opened to the operation of some or all of the public land laws, including the mining laws, the Secretary of the Army shall decontaminate the land to the extent that funds are appropriated for such purpose.

(2) If the Secretaries of the Army and the Interior conclude either that the contamination of any or all of the lands proposed for relinquishment is not practicable or economically feasible, or that the lands cannot be decontaminated sufficiently to allow them to be opened to the operation of the public land laws, or if Congress declined to appropriate funds for decontamination of the lands, the Secretary of the Interior shall not be required to accept the lands proposed for relinquishment.

(3) If, because of their contaminated state, the Secretary of the Interior declines under paragraph (2) to accept jurisdiction of the lands proposed for relinquishment, or if at the expiration of the withdrawal made by the Title the Secretary of the Interior determines that some of the lands withdrawn by this Title are contaminated to an extent which prevents opening such contaminated lands to operation of the public land laws—

(A) the Secretary of the Army shall take appropriate steps to warn the public of the contaminated state of such lands and any risks associated with entry onto such lands;

(B) after the expiration of the withdrawal, the Secretary of the Army shall undertake no activities on such lands except in connection with decontamination of such lands; and

(C) the Secretary of the Army shall report to the Secretary of the Interior and to the Congress concerning the status of such lands and all actions taken in furtherance of the subsection.

(4) If the lands are subsequently decontaminated, upon certification by the Secretary of the Army that the lands are safe for all nomilitary uses, the Secretary of the Interior shall reconsider accepting jurisdiction over the lands.

(5) Nothing in this Title shall affect, or be construed to affect, the Secretary's obligations, if any, to decontaminate such lands pursuant to applicable law, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. 9601 et seq.), and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).

(e) PROGRAM OF DECONTAMINATION.—Throughout the duration of the withdrawal and reservation made by the Title, the Secretary of the Army, to the extent funds are made available, shall maintain a program of decontamination of the lands withdrawn by this Title at least at the level of effort carried out during fiscal year 1992.

(f) ACCEPTANCE OF LANDS PROPOSED FOR RELINQUISHMENT.—Notwithstanding any other provision of law, the Secretary of the Interior, upon deciding that it is in the public interest to accept jurisdiction over those lands proposed for relinquishment, is authorized to revoke the withdrawal and reservation established by this Title as it applies to the lands proposed for relinquishment. Should the decision be made to revoke the withdrawal and reservation, the Secretary of the Interior shall publish in the Federal Register an appropriate order which shall—

(1) terminate the withdrawal and reservation;

(2) constitute official acceptance of full jurisdiction over the lands by the Secretary of the Interior; and

(3) state the date upon which the lands will be opened to the operation of the public land laws, including the mining laws if appropriate.

SECTION 2108. DELEGATION.

The function of the Secretary of the Army under this Act may be delegated. The functions of the Secretary of the Interior under this Title may be delegated, except that the order referred to in section 2007(f) may be approved and signed only by the Secretary of the Interior, the Deputy Secretary of the Interior, or an Assistant Secretary of the Department of the Interior.

SECTION 2109. HOLD HARMLESS PROVISION.

(a) IN GENERAL.—The United States and all departments or agencies thereof shall be held harmless and shall not be liable for any injuries or damages to persons or property suffered in the course of any mining, mineral activity, or geothermal leasing activity conducted on lands comprising the Fort Carson Military Reservation or Pinon Canyon Maneuver Site, including liabilities to non-Federal entities under sections 107 or 113 of the

Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9607 and 9613, or section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

(b) INDEMNIFICATION.—Any party conducting any mining, mineral or geothermal leasing activity on such lands shall indemnify the United States and its departments or agencies thereof against any costs, fees, damages, or other liabilities, including costs of litigation, arising from or related to such mining activities, including costs of minerals disposal, whether arising under the Comprehensive Environmental Resource Compensation and Liability Act, the Resource Conservation and Recovery Act, or otherwise.

SECTION 2110. AMENDMENTS TO MILITARY LANDS WITHDRAWAL ACT OF 1986.

(a) USE OF CERTAIN RESOURCE.—Section 3(f) of the Military Lands Withdrawal Act of 1986 (Public Law 99-606; 100 Stat. 3461) is amended by adding at the end a new paragraph (2) as follows:

"(2) Subject to valid existing rights, the Secretary of the military department concerned may utilize sand, gravel, or similar mineral or material resources from lands withdrawn for the purposes of this Act when the use of such resources is required for construction needs on the respective lands withdrawn by this Act.".

(b) TECHNICAL CORRECTION.—Section 9(b) of the Military lands Withdrawal Act of 1986 (Public Law 99-606; 100 Stat. 3466) is amended by striking "7(f)" and inserting in lieu thereof, "8(f)".

SECTION 2111. AUTHORIZATION OF APPROPRIATIONS.

There are hereby authorized to be appropriated such sums as may be necessary to carry out this Title.

TITLE XXII—SNOWBASIN LAND EXCHANGE ACT

SECTION 2201. FINDINGS AND DETERMINATION.

(a) FINDINGS.—The Congress finds that—

(1) in June 1995, Salt Lake City, Utah, was selected to host the 2002 Winter Olympic Games and the Snowbasin Ski Resort, which is owned by the Sun Valley Company, was identified as the site of six Olympic events: the men's and women's downhills, men's and women's Super-Gs, and men's and women's combined downhills;

(2) in order to adequately accommodate these events, which are traditionally among the most popular and heavily attended at the Winter Olympic Games, major new skiing, visitor, and support facilities will have to be constructed at the Snowbasin Ski Resort on land currently administered by the United States Forest Service;

(3) while certain of these new facilities can be accommodated on National Forest land under traditional Forest Service permitting authorities, the base area facilities necessary to host visitors to the ski area and the Winter Olympics are of such a nature that they should logically be located on private land;

(4) land exchanges have been routinely utilized by the Forest Service to transfer base area lands to many other ski areas, and the Forest Service and the Sun Valley Company have concluded that a land exchange to transfer base area lands at the Snowbasin Ski Resort to the Sun Valley Company is both logical and advisable;

(5) an environmental impact statement and numerous resource studies have been completed by the Forest Service and the Sun Valley Company for the lands proposed to be transferred to the Sun Valley Company by this Title;

(6) the Sun Valley Company has assembled lands with outstanding environmental, recreational, and other values to convey to the Forest Service in return for the lands it will receive in the exchange, and the Forest Service has identified such lands as desirable for acquisition by the United States; and

(7) completion of a land exchange and approval of a development plan for Olympic related facilities at the Snowbasin Ski Resort is essential to ensure that all necessary facilities can be constructed, tested for safety and other purposes, and become fully operational in advance of the 2002 Winter Olympics and earlier pre-Olympic events.

(b) DETERMINATION.—The Congress has reviewed the previous analyses and studies of the lands to be exchanged and developed pursuant to this Title, and has made its own review of these lands and issues involved, and on the basis of those reviews hereby finds and determines that a legislated land exchange and development plan approval with respect to certain National Forest System Lands is necessary to meet Olympic goals and timetables.

SECTION 2202. PURPOSE AND INTENT.

The purpose of this Title is to authorize and direct the Secretary to exchange 1,320 acres of federally-owned land within the Cache National Forest in the State of Utah for lands of approximately equal value owned by the Sun Valley Company. It is the intent of Congress that this exchange be completed without delay within the period specified by section 2104.

SECTION 2203. DEFINITIONS.

As used in this Title—

(1) the term "Sun Valley Company" means the Sun Valley Company, a division of Sinclair Oil Corporation, a Wyoming Corporation, or its successors or assigns; and

(2) the term "Secretary" means the Secretary of Agriculture.

SECTION 2204. EXCHANGE.

(a) FEDERAL SELECTED LANDS.—(1) Not later than 45 days after the final determination of value of the Federal selected lands, the Secretary shall, subject to this Title, transfer all right, title, and interest of the United States in and to the lands referred to in paragraph (2) to the Sun Valley Company.

(2) The lands referred to in paragraph (1) are certain lands within the Cache National Forest in the State of Utah comprising 1,320 acres, more or less, as generally depicted on the map entitled "Snowbasin Land Exchange—Proposed" and dated October 1995.

(b) NON-FEDERAL OFFERED LANDS.—Upon transfer of the Federal selected lands under subsection (a), and in exchange for those lands, the Sun Valley Company shall simultaneously convey to the Secretary all right, title and interest of the Sun Valley Company in and to so much of the following offered lands which have been previously identified by the United States Forest Service as desirable by the United States, or which are identified pursuant to paragraph (5) prior to the transfer of lands under subsection (a), as are of approximate equal value to the Federal selected lands:

(1) Certain lands located within the exterior boundaries of the Cache National Forest in Weber County, Utah, which comprise approximately 640 acres and are generally depicted on a map entitled "Lightning Ridge Offered Lands", dated October 1995.

(2) Certain lands located within the Cache National Forest in Weber County, Utah, which comprise approximately 635 acres and are generally depicted on a map entitled "Wheeler Creek Watershed Offered Lands-Section 2" dated October 1995.

(3) Certain lands located within the exterior boundaries of the Cache National Forest in Weber County, Utah, and lying immediately adjacent to the outskirts of the City of Ogden, Utah, which comprise approximately 800 acres and are generally depicted on a map entitled "Taylor Canyon Offered Lands", dated October 1995.

(4) Certain lands located within the exterior boundaries of the Cache National Forest in Weber County, Utah, which comprise approximately 2,040 acres and are generally depicted on a map entitled "North Fork Ogden River-Devil's Gate Valley", dated October 1995.

(5) Such additional offered lands in the State of Utah as may be necessary to make the values of the lands exchanged pursuant to this Title approximately equal, and which are acceptable to the Secretary.

(c) SUBSTITUTION OF OFFERED LANDS.—If one or more of the precise offered land parcels identified in paragraphs (1) through (4) of subsection (b) is unable to be conveyed to the United States due to appraisal or other reasons, or if the Secretary and the Sun Valley Company mutually agree and the Secretary determines that an alternative offered land package would better serve long term public needs and objectives, the Sun Valley Company may simultaneously convey to the United States alternative offered lands in the State of Utah acceptable to the Secretary in lieu of any or all of the lands identified in paragraph (1) through (4) of subsection (b).

(d) VALUATION AND APPRAISALS.—(1) Values of the lands to be exchanged pursuant to this Title shall be equal as determined by the Secretary utilizing nationally recognized appraisal standards and in accordance with section 206 of the Federal Land Policy and Management Act of 1976. The appraisal reports shall be written to Federal standards as defined in the Uniform Appraisal Standards for Federal Land Acquisitions. If, due to size, location, or use of lands exchanged under this Title, the values are not exactly equal, they shall be equalized by the payment of cash equalization money to the Secretary or the Sun Valley Company as appropriate in accordance with section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)). In order to expedite the consummation of the exchange directed by this Title, the Sun Valley Company shall arrange and pay for appraisals of the offered and selected lands by a qualified appraiser with experience in appraising similar properties and who is mutually acceptable to the Sun Valley Company and the Secretary. The appraisal of the Federal selected lands shall be completed and submitted to the Secretary for technical review and approval no later than 120 days after the date of enactment of this Act, and the Secretary shall make a determination of value not later than 30 days after receipt of the appraisal. In the event the Secretary and the Sun Valley Company are unable to agree to the appraised value of a certain tract or tracts of land, the appraisal, appraisals, or appraisal issues in dispute and a final determination of value shall be resolved through a process of bargaining or submission to arbitration in accordance with section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

(2) In order to expedite the appraisal of the Federal selected lands, such appraisal shall—

(A) value the land in its unimproved state, as a single entity for its highest and best use

as if in private ownership and as of the date of enactment of this Act;

(B) consider the Federal lands as an independent property as though in the private marketplace and suitable for development to its highest and best use;

(C) consider in the appraisal any encumbrance on the title anticipated to be in the conveyance to Sun Valley Company and reflect its effect on the fair market value of the property; and

(D) not reflect any enhancement in value to the Federal selected lands based on the existence of private lands owned by the Sun Valley Company in the vicinity of the Snowbasin Ski Resort, and shall assume that private lands owned by the Sun Valley Company are not available for use in conjunction with the Federal selected lands.

SECTION 2205. GENERAL PROVISIONS RELATING TO THE EXCHANGE.

(a) IN GENERAL.—The exchange authorized by this Title shall be subject to the following terms and conditions:

(1) RESERVED RIGHTS-OF-WAY.—In any deed issued pursuant to section 5(a), the Secretary shall reserve in the United States a right of reasonable access across the conveyed property for public access and for administrative purposes of the United States necessary to manage adjacent federally-owned lands. The terms of such reservation shall be prescribed by the Secretary within 30 days after the date of the enactment of this Act.

(2) RIGHT OF RESCISSION.—This Title shall not be binding on either the United States or the Sun Valley Company if, within 30 days after the final determination of value of the Federal selected lands, the Sun Valley Company submits to the Secretary a duly authorized and executed resolution of the Company stating its intention not to enter into the exchange authorized by this Title.

(b) WITHDRAWAL.—Subject to valid existing rights, effective on the date of enactment of this Act, the Federal selected lands described in section 5(a)(2) and all National Forest System lands currently under special use permit to the Sun Valley Company at the Snowbasin Ski Resort are hereby withdrawn from all forms of appropriation under the public land laws (including the mining laws) and from disposition under all laws pertaining to mineral and geothermal leasing.

(c) DEED.—The conveyance of the offered lands to the United States under this Title shall be by general warranty or other deed acceptable to the Secretary and in conformity with applicable title standards of the Attorney General of the United States.

(d) STATUS OF LANDS.—Upon acceptance of title by the Secretary, the land conveyed to the United States pursuant to this Title shall become part of the Wasatch or Cache National Forests as appropriate, and the boundaries of such National Forests shall be adjusted to encompass such lands. Once conveyed, such lands shall be managed in accordance with the Act of March 1, 1911, as amended (commonly known as the "Weeks Act"), and in accordance with the other laws, rules and regulations applicable to National Forest System lands. This subsection does not limit the Secretary's authority to adjust the boundaries pursuant to section 11 of the Act of March 1, 1911 ("Weeks Act"). For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9), the boundaries of the Wasatch and Cache National Forests, as adjusted by this Title, shall be considered to be boundaries of the forests as of January 1, 1965.

SECTION 2206. PHASE I FACILITY CONSTRUCTION AND OPERATION.

(a) PHASE I FACILITY FINDING AND REVIEW.—(1) The Congress has reviewed the Snowbasin Ski Area Master Development Plan dated October 1995 (hereinafter in this section referred to as the "Master Plan"). On the basis of such review, and review of previously completed environmental and other resource studies for the Snowbasin Ski Area, Congress hereby finds that the "Phase I" facilities referred to in the Master Plan to be located on National Forest System land after consummation of the land exchange directed by this Title are limited in size and scope, are reasonable and necessary to accommodate the 2002 Olympics, and in some cases are required to provide for the safety of skiing competitors and spectators.

(2) Within 60 days after the date of enactment of this Act, the Secretary and the Sun Valley Company shall review the Master Plan insofar as such plan pertains to Phase I facilities which are to be constructed and operated wholly or partially on National Forest System lands retained by the Secretary after consummation of the land exchange directed by this Title. The Secretary may modify such Phase I facilities upon mutual agreement with the Sun Valley Company or by imposing conditions pursuant to subsection (b) of this section.

(3) Within 90 days after the date of enactment of this Act, the Secretary shall submit the reviewed Master Plan on the Phase I facilities, including any modifications made thereto pursuant to paragraph (2), to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives for a 30-day review period. At the end of the 30-day period, unless otherwise directed by Act of Congress, the Secretary may issue all necessary authorizations for construction and operation of such facilities or modifications thereof in accordance with the procedures and provisions of subsection (b) of this section.

(b) PHASE I FACILITY APPROVAL, CONDITIONS, AND TIMETABLE.—Within 120 days of receipt of an application by the Sun Valley Company to authorize construction and operation of any particular Phase I facility, facilities, or group of facilities, the Secretary, in consultation with the Sun Valley Company, shall authorize construction and operation of such facility, facilities, or group of facilities, subject to the general policies of the Forest Service pertaining to the construction and operation of ski area facilities on National Forest System lands and subject to reasonable conditions to protect National Forest System resources. In providing authorization to construct and operate a facility, facilities, or group of facilities, the Secretary may not impose any condition that would significantly change the location, size, or scope of the applied for Phase I facility unless—

(1) the modification is mutually agreed to by the Secretary and the Sun Valley Company; or

(2) the modification is necessary to protect health and safety. Nothing in this section shall be construed to affect the Secretary's responsibility to monitor and assure compliance with the conditions set forth in the construction and operation authorization.

(c) CONGRESSIONAL DIRECTIONS.—Notwithstanding any other provision of law, Congress finds that consummation of the land exchange directed by this Title and all determinations, authorizations, and actions taken by the Secretary pursuant to this Title pertaining to Phase I facilities on National Forest System lands, or any modifications thereof, to be nondiscretionary actions authorized and directed by Congress and hence to comply with all procedural and other requirements of the laws of the United States. Such determinations, authorizations, and actions shall not be subject to administrative or judicial review.

SECTION 2207. NO PRECEDENT.

Nothing in section 2104(d)(2) of this Title relating to conditions or limitations on the appraisal of the Federal lands, or any provision of section 2106 relating to the approval by the Congress or the Forest Service of facilities on National Forest System lands, shall be construed as a precedent for subsequent legislation.

TITLE XXIII—COLONIAL NATIONAL HISTORICAL PARK

SECTION 2301. COLONIAL NATIONAL HISTORICAL PARK.

(a) TRANSFER AND RIGHTS-OF-WAY.—The Secretary of the Interior (hereinafter in this Title referred to as the "Secretary") is authorized to transfer, without reimbursement, to York County, Virginia, that portion of the existing sewage disposal system, including related improvements and structures, owned by the United States and located within the Colonial National Historical Park, together with such rights-of-way as are determined by the Secretary to be necessary to maintain and operate such system.

(b) REPAIR AND REHABILITATION OF SYSTEM.—The Secretary is authorized to enter into a cooperative agreement with York County, Virginia, under which the Secretary will pay a portion, not to exceed $110,000, of the costs of repair and rehabilitation of the sewage disposal system referred to in subsection (a).

(c) FEES AND CHARGES.—In consideration for the rights-of-way granted under subsection (a), and in recognition of the National Park Service's contribution authorized under subsection (b), the cooperative agreement under subsection (b) shall provide for a reduction in, or the elimination of, the amounts charged to the National Park Service for its sewage disposal. The cooperative agreement shall also provide for minimizing the impact of the sewage disposal system on the park and its resources. Such system may not be enlarged or substantially altered without National Park Service concurrence.

SECTION 2302. INCLUSION OF LAND IN COLONIAL NATIONAL HISTORICAL PARK.

Notwithstanding the provisions of the Act of June 28, 1938 (52 Stat. 1208; 16 U.S.C. 81b et seq.), limiting the average width of the Colonial Parkway, the Secretary of the Interior is authorized to include within the boundaries of Colonial National Historical Park and acquire by donation, exchange, or purchase with donated or appropriated funds—

(1) the lands or interests in lands described as lots 30 to 48, inclusive;

(2) the portion of lot 49 that is 200 feet in width from the existing boundary of Colonial National Historical Park;

(3) a 3.2-acre archaeological site, as shown on the plats titled "Page Landing At Jamestown being a subdivision of property of Neck O Land Limited Partnership" dated June 21, 1989, sheets 2 and 3 of 3 sheets and bearing National Park Service Drawing Number 333.80031; and

(4) all or a portion of the adjoining lot number 11 of the Neck O Land Hundred Subdivision, with or without improvements.

SECTION 2303. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Title.

TITLE XXIV—WOMEN'S RIGHTS NATIONAL HISTORICAL PARK

SECTION 2401. INCLUSION OF OTHER PROPERTIES.

Section 1601(c) of Public Law 96–607 (16 U.S.C. 41011) is amended to read as follows: "To carry out the purposes of this section there is hereby established the Women's Rights National Historical Park (hereinafter in this section referred to as the "park"). The park shall consist of the following designated sites in Seneca Falls and Waterloo, New York:

"(1) Stanton House, 32 Washington Street, Seneca Falls;

"(2) dwelling, 30 Washington Street, Seneca Falls;

"(3) dwelling, 34 Washington Street, Seneca Falls;

"(4) lot, 26–28 Washington Street, Seneca Falls;

"(5) former Wesleyan Chapel, 126 Fall Street, Seneca Falls;

"(6) theater, 128 Fall Street, Seneca Falls;

"(7) McClintock House, 16 East Williams Street, Waterloo;

"(8) Hunt House, 401 East Williams Street, Waterloo;

"(9) not to exceed 1 acre, plus improvements, as determined by the Secretary, in Seneca Falls for development of a maintenance facility

"(10) dwelling, 1 Seneca Street, Seneca Falls;

"(11) dwelling, 10 Seneca Street, Seneca Falls;

"(12) parcels adjacent to Wesleyan Chapel Block, including Clinton Street, Fall Street, and Mynderse Street, Seneca Falls; and

"(13) dwelling, 12 East Williams Street, Waterloo.".

SECTION 2402. MISCELLANEOUS AMENDMENTS.

Section 1601 of Public Law 96–607 (16 U.S.C. 41011) is amended by redesignating subsection (i) as "(i)(1)" and inserting at the end thereof the following new paragraph:

"(2) In addition to those sums appropriated prior to the date of enactment of this paragraph for land acquisition and development, there is hereby authorized to be appropriated an additional $2,000,000.".

TITLE XXV—FRANKLIN D. ROOSEVELT FAMILY LANDS

SECTION 2501. ACQUISITION OF LANDS.

(a) IN GENERAL.—(1) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire, by purchase with donated or appropriated funds, donation, or otherwise, lands and interests therein in the following properties located at Hyde Park, New York identified as lands critical for protection as depicted on the map entitled "Roosevelt Family Estate" and dated September 1994—

(A) the "Open Park Hodhome Tract", consisting of approximately 40 acres, which shall be the highest priority for acquisition;

(B) the "Top Cottage Tract", consisting of approximately 30 acres; and

(C) the "Poughkeepsie Shopping Center, Inc. Tract", consisting of approximately 55 acres.

(b) ADMINISTRATION.—Lands and interests therein acquired by the Secretary pursuant to this Title shall be added to, and administered by the Secretary as part of the Franklin Delano Roosevelt National Historic Site or the Eleanor Roosevelt National Historic Site, as appropriate.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated not to exceed $3,000,000 to carry out this Title.

TITLE XXVI—GREAT FALLS HISTORIC DISTRICT, NEW JERSEY

SECTION 2601. FINDINGS.

Congress finds that—

(1) the Great Falls Historic District in the State of New Jersey is an area of historical significance as an early site of planned industrial development, and has remained largely intact, including architecturally significant structures;

(2) the Great Falls Historic District is listed on the National Register of Historic Places and has been designated a National Historic Landmark;

(3) the Great Falls Historic District is situated within a one-half hour's drive from New York City and a 2 hour's drive from Philadelphia, Hartford, New Haven, and Wilmington;

(4) the District was developed by the Society of Useful Manufactures, an organization whose leaders included a number of historically renowned individuals, including Alexander Hamilton; and

(5) the Great Falls Historic District has been the subject of a number of studies that have shown that the District possesses a combination of historic significance and natural beauty worthy of and uniquely situated for preservation and redevelopment.

SECTION 2602. PURPOSES.

The purposes of this Title are—

(1) to preserve and interpret, for the educational and inspirational benefit of the public, the contribution to our national heritage of certain historic and cultural lands and edifices of the Great Falls Historic District, with emphasis on harnessing this unique urban environment for its educational and recreational value; and

(2) to enhance economic and cultural redevelopment within the District.

SECTION 2603. DEFINITIONS.

In this Act:

(1) DISTRICT.—The term "District" means the Great Falls Historic District established by section 5.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SECTION 2604. GREAT FALLS HISTORIC DISTRICT.

(a) ESTABLISHMENT.—There is established the Great Falls Historic District in the city of Paterson, in Passaic County, New Jersey.

(b) BOUNDARIES.—The boundaries of the District shall be the boundaries specified for the Great Falls Historic District listed on the National Register of Historic Places.

SECTION 2605. DEVELOPMENT PLAN.

(a) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may make grants and enter into cooperative agreements with the State of New Jersey, local governments, and private nonprofit entities under which the Secretary agrees to pay not more than 50 percent of the costs of—

(1) preparation of a plan for the development of historic, architectural, natural, cultural, and interpretive resources within the District; and

(2) implementation of projects approved by the Secretary under the development plan.

(b) CONTENTS OF PLAN.—The development plan shall include—

(1) an evaluation of—

(A) the physical condition of historic and architectural resources; and

(B) the environmental and flood hazard conditions within the District; and

(2) recommendations for—

(A) rehabilitating, reconstructing, and adaptively reusing the historic and architectural resources;

(B) preserving viewsheds, focal points, and streetscapes;

(C) establishing gateways to the District;

(D) establishing and maintaining parks and public spaces;

(E) developing public parking areas;

(F) improving pedestrian and vehicular circulation within the District;

(G) improving security within the District, with an emphasis on preserving historically significant structures from arson; and

(H) establishing a visitors' center.

SECTION 2606. RESTORATION, PRESERVATION, AND INTERPRETATION OF PROPERTIES.

(a) COOPERATIVE AGREEMENTS.—The Secretary may enter into cooperative agreements with the owners of properties within the District that the Secretary determines to be of historical or cultural significance, under which the Secretary may—

(1) pay not more than 50 percent of the cost of restoring and improving the properties;

(2) provide technical assistance with respect to the preservation and interpretation of the properties; and

(3) mark and provide interpretation of the properties.

(b) PROVISIONS.—A cooperative agreement under subsection (a) shall provide that—

(1) the Secretary shall have the right of access at reasonable times to public portions of the property for interpretive and other purposes;

(2) no change or alteration may be made in the property except with the agreement of the property owner, the Secretary, and any Federal agency that may have regulatory jurisdiction over the property; and

(3) if at any time the property is converted, used, or disposed of in a manner that is contrary to the purposes of this Act, as determined by the Secretary, the property owner shall be liable to the Secretary for the greater of—

(A) the amount of assistance provided by the Secretary for the property; or

(B) the portion of the increased value of the property that is attributable to that assistance, determined as of the date of the conversion, use, or disposal.

(c) APPLICATIONS.—

(1) IN GENERAL.—A property owner that desires to enter into a cooperative agreement under subsection (a) shall submit to the Secretary an application describing how the project proposed to be funded will further the purposes of the District.

(2) CONSIDERATION.—In making such funds available under this section, the Secretary shall give consideration to projects that provide a greater leverage of Federal funds.

SECTION 2607. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary to carry out this Title—

(1) $250,000 for grants and cooperative agreements for the development plan under section 6; and

(2) $50,000 for the provision of technical assistance and $3,000,000 for the provision of other assistance under cooperative agreements under section 7.

TITLE XXVII—RIO PUERCO WATERSHED

SECTION 2701. FINDINGS.

Congress finds that—

(1) over time, extensive ecological changes have occurred in the Rio Puerco watershed, including—

(A) erosion of agricultural and range lands;

(B) impairment of waters due to heavy sedimentations;

(C) reduced productivity of renewable resources;

(D) loss of biological diversity;

(E) loss of functioning riparian areas; and

(F) loss of available surface water;

(2) damage to the watershed has seriously affected the economic and cultural well-being of its inhabitants, including—

(A) loss of communities that were based on the land and were self-sustaining; and

(B) adverse effects on the traditions, customs, and cultures of the affected communities;

(3) a healthy and sustainable ecosystem is essential to the long-term economic and cultural viability of the region;

(4) the impairment of the Rio Puerco watershed has caused damage to the ecological and economic well-being of the area below the junction of the Rio Puerco with the Rio Grande, including—

(A) disruption of ecological processes;

(B) water quality impairment;

(C) significant reduction in the water storage capacity and life expectancy of the Elephant Butte Dam and Reservoir system due to sedimentation;

(D) chronic problems of irrigation system channel maintenance; and

(E) increased risk of flooding caused by sediment accumulation;

(5) the Rio Puerco is a major tributary of the Rio Grande, and the coordinated implementation of ecosystem-based best management practices for the Rio Puerco system could benefit the larger Rio Grande system;

(6) the Rio Puerco watershed has been stressed from the loss of native vegetation, introduction of exotic species, and alteration of riparian habitat which had disrupted the original dynamics of the river and disrupted natural ecological processes;

(7) the Rio Puerco watershed is a mosaic of private, Federal, tribal trust, and State land ownership with diverse, sometimes differing management objectives;

(8) development, implementation, and monitoring of an effective watershed management program for the Rio Puerco watershed is best achieved through cooperation among affected Federal, state, local, and tribal entities;

(9) the Secretary of the Interior, acting through the Director of the bureau of Land Management, in consultation with Federal, State, local, and tribal entitles and in cooperation with the Rio Puerco Watershed Committee, is best suited to coordinate management efforts in the Rio Puerco Watershed; and

(10) accelerating the pace of improvement in the Rio Puerco Watershed on a coordinated, cooperative basis will benefit persons living in the watershed as well as downstream users on the Rio Grande.

SECTION 2702. MANAGEMENT PROGRAM.

(a) IN GENERAL.—The Secretary of the Interior, acting through the Director of the Bureau of Land Management shall—

(1) in consultation with the Rio Puerco Management Committee established by section 4—

(A) establish a clearinghouse for research and information on management within the area identified as the Rio Puerco Drainage Basin, as depicted on the map entitled "the Rio Puerco Watershed" dated June 1994, including—

(i) current and historical natural resource conditions; and

(ii) data concerning the extent and causes of watershed impairment; and

(B) establish an inventory of best management practices and related monitoring activities that have been or may be implemented within the area identified as the Rio Puerco Watershed Project, ad depicted on the map entitled "the Rio Puerco Watershed" dated June 1994; and

(2) provide support to the Rio Puerco Management Committee to identify objectives, monitor results of ongoing projects, and develop alternative watershed management plans for the Rio Puerco Drainage Basin, based on best management practices.

(b) RIO PUERCO MANAGEMENT REPORT.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Secretary of the Interior, in consultation with the Rio Puerco Management Committee, shall prepare a report for the improvement of watershed conditions in the Rio Puerco Drainage Basin described in subsection (a)(1).

(2) CONTENTS.—The report under paragraph (1) shall—

(A) identify reasonable and appropriate goals and objectives for landowners and managers in the Rio Puerco watershed;

(B) describe potential alternative actions to meet the goals and objectives, including proven best management practices and costs associated with implementing the actions;

(C) recommend voluntary implementation of appropriate best management practices on public and private lands;

(D) provide for cooperative development of management guidelines for maintaining and improving the ecological, cultural, and economic conditions on public and private lands;

(E) provide for the development of public participation and community outreach programs that would include proposals for—

(i) cooperative efforts with private landowners to encourage implementation of best management practices within the watershed; and

(ii) Involvement of private citizens in restoring the watershed;

(F) provide for the development of proposals for voluntary cooperative programs among the members of the Rio Puerco Management Committee to implement best management practices in a coordinated, consistent, and cost-effective manner;

(G) provide for the encouragement of, and support implementation of, best management practices on private lands; and

(H) provide for the development of proposals for a monitoring system that—

(i) builds on existing data available from private, Federal, and State sources;

(ii) provides for the coordinated collection, evaluation, and interpretation of additional data as needed or collected; and

(iii) will provide information to—

(I) assess existing resource and socioeconomic conditions;

(II) identify priority implementation actions; and

(III) assess the effectiveness of actions taken.

SECTION 2703. RIO PUERCO MANAGEMENT COMMITTEE.

(a) ESTABLISHMENT.—There is established the Rio Puerco Management Committee (referred to in this section as the "Committee").

(b) MEMBERSHIP.—The Committee shall be convened by a representative of the Bureau of Land Management and shall include representatives from—

(1) the Rio Puerco Watershed Committee;

(2) affected tribes and pueblos;

(3) the National Forest Service of the Department of Agriculture;

(4) the Bureau of Reclamation;

(5) the United States Geological Survey;

(6) the Bureau of Indian Affairs;

(7) the United States Fish and Wildlife Service;

(8) the Army Corps of Engineers;

(9) the Natural Resources Conservation Service of the Department of Agriculture;

(10) the State of New Mexico, including the New Mexico Environment Department of the State Engineer;

(11) affected local soil and water conservation districts;

(12) the Elephant Butte Irrigation District;

(13) private landowners; and

(14) other interested citizens.

(c) DUTIES.—The Rio Puerco Management Committee shall—

(1) advise the Secretary of the Interior, acting through the Director of the Bureau of Land Management, on the development and implementation of the Rio Puerco Management Program described in section 3; and

(2) serve as a forum for information about activities that may affect or further the development and implementation of the best management practices described in section 3.

(d) TERMINATION.—The Committee shall terminate on the date that is 10 years after the date of enactment of this Act.

SECTION 2704. REPORT.

Not later than the date that is 2 years after the date of enactment of this Act, and biennially thereafter, the Secretary of the Interior, in consultation with the Rio Puerco Management Committee, shall transmit to the Committee on Energy and Natural Resources of the Senate and to the Committee on Resources of the House of Representatives a report containing—

(1) a summary of activities of the management program under section 3; and

(2) proposals for joint implementation efforts, including funding recommendations.

SECTION 2705. LOWER RIO GRANDE HABITAT STUDY.

(a) IN GENERAL.—The Secretary of the Interior, in cooperation with appropriate State agencies, shall conduct a study of the Rio Grande that—

(1) shall cover the distance from Caballo Lake to Sunland Park, New Mexico; and

(2) may cover a greater distance.

(b) CONTENTS.—The study under subsection (a) shall include—

(1) a survey of the current habitat conditions of the river and its riparian environment;

(2) identification of the changes in vegetation and habitat over the past 400 years and the effect of the changes on the river and riparian area; and

(3) an assessment of the feasibility, benefits, and problems associated with activities to prevent further habitat loss and to restore habitat through reintroduction or establishment of appropriate native plant species.

(c) TRANSMITTAL.—Not later than 3 years after the date on which funds are made available to carry out this Act, the Secretary of the Interior shall transmit the study under subsection (a) to the Committee on Energy and Natural Resources of the Senate and to the Committee on Resources of the House of Representatives.

SECTION 2706. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out sections 1, 2, 3, 4, and 5 a total of $7,500,000 for the 10 fiscal years beginning after the date of enactment of this Act.

TITLE XXVIII—COLUMBIA BASIN

SECTION 2801. LAND EXCHANGE.

The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to convey to the Boise Cascade Corporation (hereinafter referred to as the "Corporation"), a corporation formed under the statutes of the State of Delaware, with its principal place of business at Boise, Idaho, title

to approximately seven acres of land, more or less, located in sections 14 and 23, township 36 north, range 37 east, Willamette Meridian, Stevens County, Washington, further identified in the records of the Bureau of Reclamation, Department of the Interior, as Tract No. GC-19860, and to accept from the Corporation in exchange therefor, title to approximately one hundred and thirty-six acres of land located in section 19, township 37 north, range 38 east and section 33, township 38 north, range 37 east, Willamette Meridian, Stevens County, Washington, and further identified in the records of the Bureau of Reclamation, Department of the Interior, as Tract No. GC-19858 and Tract No. GC-19859, respectively.

SECTION 2802. APPRAISAL.

The properties so exchanged either shall be approximately equal in fair market value or if they are not approximately equal, shall be equalized by the payment of cash to the Corporation or to the Secretary as required or in the event the value of the Corporation's lands is greater, the acreage may be reduced so that the fair market value is approximately equal: *Provided*, That the Secretary shall order appraisals made of the fair market value of each tract of land included in the exchange without consideration for improvements thereon: *Provided further*, That any cash payment received by the Secretary shall be covered in the Reclamation Fund and credited to the Columbia Basin project.

SECTION 2803. ADMINISTRATIVE COSTS.

Costs of conducting the necessary land surveys, preparing the legal description of the lands to be conveyed, performing the appraisals, and administrative costs incurred in completing the exchange shall be borne by the Corporation.

SECTION 2804. LIABILITY FOR HAZARDOUS SUBSTANCES.

(a) The Secretary shall not acquire any lands under this Title if the Secretary determines that such lands, or any portion thereof, have become contaminated with hazardous substances (as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601)).

(b) Notwithstanding any other provision of law, the United States shall have no responsibility or liability with respect to any hazardous wastes or other substances placed on any of the lands covered by this Title after their transfer to the ownership of any party, but nothing in this Act shall be construed as either diminishing or increasing any responsibility or liability of the United States based on the condition of such lands on the date of their transfer to the ownership of another party. The Corporation shall indemnify the United States for liabilities arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), and the Resource Conservation Recovery Act (42 U.S.C. 6901 et seq.).

SECTION 2805. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purpose of this Title.

TITLE XXIX—GRAND LAKE CEMETERY

SECTION 2901. MAINTENANCE OF CEMETERY IN ROCKY MOUNTAIN NATIONAL PARK.

(a) AGREEMENT.—Notwithstanding any other law, not later than 6 months after the date of enactment of this Act, the Secretary of the Interior shall enter into an appropriate form of agreement with the town of Grand Lake, Colorado, authorizing the town to maintain permanently, under appropriate terms and conditions, a cemetery within the boundaries of the Rocky Mountain National Park.

(a) CEMETERY BOUNDARIES.—The cemetery shall be comprised of approximately 5 acres of land, as generally depicted on the map entitled "Grand Lake Cemetery" and dated February 1995.

(c) AVAILABILITY FOR PUBLIC INSPECTION.—The Secretary of the Interior shall place the map described in subsection (b) on file, and make the map available for public inspection, in the headquarters office of the Rocky Mountain National Park.

(d) LIMITATION.—The cemetery shall not be extended beyond the boundaries of the cemetery shown on the map described in subsection (b).

TITLE XXX—OLD SPANISH TRAIL

SECTION 3001. DESIGNATION.

Section 5(c) of the National Trails System Act (16 U.S.C. 1244(c)) is amended by adding at the end the following new paragraph:

"(36) The Old Spanish Trail, beginning in Santa Fe, New Mexico, proceeding through Colorado and Utah, and ending in Los Angeles, California, and the Northern Branch of the Old Spanish Trail, beginning near Espanola, New Mexico, proceeding through Colorado, and ending near Crescent Junction, Utah."

TITLE XXXI—BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

SECTION 3101. BOUNDARY CHANCES.

Section 2 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by striking the first sentence and inserting the following new sentence: "The boundaries shall include the lands and water generally depicted on the map entitled Blackstone River Valley National Heritage Corridor Boundary Map, numbered BRV-80-80,011, and dated May 2, 1993.".

SECTION 3102. TERMS.

Section 3(c) of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by inserting immediately before the period at the end the following: ", but may continue to serve after the expiration of this term until a successor has been appointed".

SECTION 3103. REVISION OF PLAN.

Section 6 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

"(d) REVISION OF PLAN.—(1) Not later than 1 year after the date of enactment of this subsection, the Commission, with the approval of the Secretary, shall revise the Cultural Heritage and Land Management Plan. The revision shall address the boundary change and shall include a natural resource inventory of areas or features that should be protected, restored, managed, or acquired because of their contribution to the understanding of national cultural landscape values.

"(2) No changes other than minor revisions may be made in the approved plan as amended without the approval of the Secretary. The Secretary shall approve or disapprove any proposed change in the plan, except minor revisions, in accordance with subsection (b).".

SECTION 3104. EXTENSION OF COMMISSION.

Section 7 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows:

"TERMINATION OF COMMISSION

"SEC. 7. (a) TERMINATION.—Except as provided in subsection (b), the Commission shall terminate on the date that is 10 years after the date of enactment of the Blackstone River Valley National Heritage Corridor Amendments Act of 1995.

"(b) EXTENSION.—The Commission may be extended for an additional term of 10 years if—

"(1) not later than 180 days before the termination of the Commission, the Commission determines that an extension is necessary to carry out this Title;

"(2) the Commission submits a proposed extension to the appropriate committees of the Senate and the House of Representatives; and

"(3) the Secretary, the Governor of Massachusetts, and the Governor of Rhode Island each approve the extension.

"(c) DETERMINATION OF APPROVAL.—The Secretary shall approve the extension if the Secretary finds that—

"(1) the Governor of Massachusetts and the Governor of Rhode Island provide adequate assurances of continued tangible contribution and effective policy support toward achieving the purposes of this Title; and

"(2) the Commission is effectively assisting Federal, State, and local authorities to retain, enhance, and interpret the distinctive character and nationally significant resources of the Corridor.".

SECTION 3105. IMPLEMENTATION OF THE PLAN.

Subsection (c) of section 8 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended to read as follows:

"(c) IMPLEMENTATION.—(1) To assist in the implementation of the Cultural Heritage and Land Management Plan in a manner consistent with purposes of this Title, the Secretary is authorized to undertake a limited program of financial assistance for the purpose of providing funds for the preservation and restoration of structures on or eligible for inclusion on the National Register of Historic Places within the Corridor which exhibit national significance or provide a wide spectrum of historic, recreational, or environmental education opportunities to the general public.

"(2) To be eligible for funds under this section, the Commission shall submit an application to the Secretary that includes—

"(A) a 10-year development plan including those resource protection needs and projects critical to maintaining or interpreting the distinctive character of the Corridor; and

"(B) specific descriptions of annual work programs that have been assembled, the participating parties, roles, cost estimates, cost-sharing, opr cooperative agreements necessary to carry out the development plan.

"(3) Funds made available pursuant to this subsection shall not exceed 50 percent of the total cost of the work programs.

"(4) In making the funds available, the Secretary shall give priority to projects that attract greater non-Federal funding sources.

"(5) Any payment made for the purposes of conservation or restoration of real property or structures shall be subject to an agreement either—

"(A) to convey a conservation or preservation easement to the Department of Environmental Management or to the Historic Preservation Commission, as appropriate, of the State in which the real property or structure is located; or

"(B) that conversion, use, or disposal of the resources so assisted for purposes contrary to the purposes of this Title, as determined by the Secretary, shall result in a right of the United States for reimbursement of all funds expended upon such resources or the proportion of the increased value of the resources attributable to such funds as determined at the time of such conversion, use, or disposal, whichever is greater.

"(6) The authority to determine that a conversion, use, or disposal of resources has been carried out contrary to the purposes of this Title in violation of an agreement entered into under paragraph (5)(A) shall be solely at the discretion of the Secretary.".

SECTION 3106. LOCAL AUTHORITY.

Section 5 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), is amended by adding at the end the following new subsection:

"(j) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED.—Nothing in this Title shall be construed to affect or to authorize the Commission to interfere with—

"(1) the rights of any person with respect to private property; or

"(2) any local zoning ordinance or land use plan of the Commonwealth of Massachusetts or a political subdivision of such Commonwealth.".

SECTION 3107. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Act entitled "An Act to establish the Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island", approved November 10, 1986 (Public Law 99-647; 16 U.S.C. 461 note), as amended, is further amended—

(1) in subsection (a), by striking "$350,000" and inserting "$650,000"; and

(2) by amending subsection (b) to read as follows:

"(b) DEVELOPMENT FUNDS.—For fiscal years 1996, 1997, and 1998, there is authorized to be appropriated to carry out section 8(c), $5,000,000 in the aggregate.".

TITLE XXXII—CUPRUM, IDAHO RELIEF

SECTION 3201. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds and declares that:

(1) In 1899, the citizens of Cuprum, Idaho, commissioned E.S. Hesse to conduct a survey describing these lands occupied by their community. The purpose of this survey was to provide a basis for the application for a townsite patent.

(2) In 1909, the Cuprum Townsite patent (Number 52817) was granted, based on an aliqot parts description which was intended to circumscribe the Hesse survey.

(3) Since the day of the patent, the Hesse survey has been used continuously by the community of Cuprum and by Adams Country, Idaho, as the official townsite plat and basis for conveyance of title within the townsite.

(4) Recent boundary surveys conducted by the United States Department of Agriculture, Forest Service, and the United States Department of the Interior, Bureau of Land Management, discovered inconsistencies between the official aliquot parts description of the patented Cuprum Townsite and the Hesse survey. Many lots along the south and east boundaries of the townsite are now known to extend onto National Forest System lands outside the townsite.

(5) It is the determination of Congress that the original intent of the Cuprum Townsite application was to include all the lands described by the Hesse survey.

(b) PURPOSE.—It is the purpose of this Title to amend the 1909 Cuprum Townsite patent to include those additional lands described by the Hesse survey in addition to other lands necessary to provide an administratively acceptable boundary to the National Forest System.

SECTION 3202. AMENDMENT OF PATENT.

(a) The 909 Cuprum Townsite patent is hereby amended to include parcels 1 and 2, identified on the plat, marked as "Township 20 North, Range 3 West, Boise Meridian, Idaho, Section 10: Proposed Patent Adjustment Cuprum Townsite, Idaho" prepared by Payette N.F.—Land Survey Unit, drawn and approved by Tom Betzold, Forest Land Surveyor, on April 25, 1995. Such additional lands are hereby conveyed to the original patentee, Pitts Ellis, trustee, and Probate Judge of Washington County, Idaho, or any successors or assigns in interest in accordance with State law. The Secretary of Agriculture may correct clerical and typographical errors in such plat.

(b) The Federal Government shall survey the Federal property lines and mark and post the boundaries necessary to implement this section.

SECTION 3203. RELEASE.

Notwithstanding section 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9620), the United States shall not be liable and shall be held harmless from any and all claims resulting from substances or petroleum products or any other hazardous materials on the conveyed land.

TITLE XXXIII—ARKANSAS AND OKLAHOMA LAND EXCHANGE

SECTION 3301. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that:

(1) The Weyerhaeuser Company has offered to the United States Government an exchange of lands under which Weyerhaeuser would receive approximately 48,000 acres of Federal land in Arkansas and Oklahoma and all mineral interests and oil and gas interests pertaining to these exchanged lands in which the United States Government has an interest in return for conveying to the United States lands owned by Weyerhaeuser consisting of approximately 180,000 acres of forested wetlands and other forest land of public interest in Arkansas and Oklahoma and all mineral interests and all oil and gas interest pertaining to 48,000 acres of these 180,000 cares of exchanged lands in which Weyerhaeuser has an interest, consisting of:

(A) certain lands in Arkansas (Arkansas Ouachita lands) located near Poteau Mountain, Caney Creek Wilderness, Lake Ouachita, Little Missouri Wild and Scenic River, Flatside Wilderness and the Ouachita National Forest;

(B) certain lands in Oklahoma (Oklahoma lands) located near the McCurtain County Wilderness, the Broken Bow Reservoir, the Glover River, and the Ouachita National Forest; and

(C) certain lands in Arkansas (Arkansas Cossatot lands) located on the Little and Cossatot Rivers and identified as the "Pond Creek Bottoms" in the Lower Mississippi River Delta section of the North American Waterfowl Management Plan;

(2) acquisition of the Arkansas Cossatot lands by the United States will remove the lands in the heart of a critical wetland ecosystem from sustained timber production and other development;

(3) the acquisition of the Arkansas Ouachita lands and the Oklahoma lands by the United States for administration by the Forest Service will provide an opportunity for enhancement of ecosystem management of the National Forest System lands and resources;

(4) the Arkansas Ouachita lands and the Oklahoma lands have outstanding wildlife habitat and important recreational values and should continue to be made available for activities such as public hunting, fishing, trapping, nature observation, enjoyment, education, and timber management whenever these activities are consistent with applicable Federal laws and land and resource management plans; these lands, especially in the riparian zones, also harbor endangered, threatened and sensitive plants and animals and the conservation and restoration of these areas are important to the recreational and educational public uses and will represent a valuable ecological resource which should be conserved;

(5) the private use of the lands the United States will convey to Weyerhaeuser will not conflict with established management objectives on adjacent Federal lands;

(6) the lands the United States will convey to Weyerhaeuser as part of the exchange described in paragraph (1) do not contain comparable fish, wildlife, or wetland values;

(7) the values of all lands, mineral interests, and oil and gas interests to be exchanged between the United States and Weyerhaeuser are approximately equal in value; and

(8) the exchange of lands, mineral interests, and oil and gas interests between Weyerhaeuser and the United States is in the public interest.

(b) PURPOSE.—The purpose of this Title is to authorize and direct the Secretary of the Interior and the Secretary of Agriculture, subject to the terms of this Title, to complete, as expeditiously as possible, an exchange of lands, mineral interests, and oil and gas interests with Weyerhaeuser that will provide environmental, land management, recreational, and economic benefits to the States of Arkansas and Oklahoma and to the United States.

SECTION 3302. DEFINITIONS.

As used in this Title:

(a) LAND.—The terms "land" or "lands" mean the surface estate and any other interests therein except for mineral interests and oil and gas interests.

(b) MINERAL INTERESTS.—The term "mineral interests" means geothermal steam and heat and all metals, ores, and minerals of any nature whatsoever, except oil and gas interests, in or upon lands subject to this Title including, but not limited to, coal, lignite, peat, rock, sand, gravel, and quartz.

(c) OIL AND GAS INTERESTS.—The term "oil and gas interests" means all oil and gas of any nature, including carbon dioxide, helium, and gas taken from coal seams, (collectively "oil and gas").

(d) SECRETARIES.—The term "Secretaries" means the Secretary of the Interior and the Secretary of Agriculture.

(e) WEYERHAEUSER.—The term "Weyerhaeuser" means Weyerhaeuser Company, a company incorporated in the State of Washington.

SECTION 3303. EXCHANGE.

(a) EXCHANGE OF LANDS AND MINERAL INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (a)(2) and notwithstanding any other provision of law, within 90 days after the date of the enactment of this Title, the Secretary of Agriculture shall convey to Weyerhaeuser, subject to any valid existing rights, approximately 20,000 acres of Federal lands and mineral interests in the State of Arkansas and approximately 28,000 aces of Federal lands and mineral interests in the State of Oklahoma as depicted on maps entitled "Arkansas-Oklahoma Land Exchange—Federal Arkansas and Oklahoma Lands," dated February 1996 and available for public inspection in appropriate offices of the Secretaries.

(2) OFFER AND ACCEPTANCE OF LANDS.—The Secretary of Agriculture shall make the conveyance to Weyerhaeuser if Weyerhaeuser conveys deeds of title to the United States, subject to limitations and the reservation described in subsection (b) and which are acceptable to and approved by the Secretary of Agriculture to the following:

(A) approximately 120,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Oklahoma, as depicted on a map entitled "Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oklahoma Lands," dated February 1996 and available for public inspection in appropriate offices of the Secretaries;

(B) approximately 35,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Arkansas, as depicted on a map entitled "Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Ouachita Lands," dated February 1996 and available for public inspection in appropriate offices of the Secretaries; and

(C) approximately 25,000 acres of lands and mineral interests owned by Weyerhaeuser in the State of Arkansas, as depicted on a map entitled "Arkansas-Oklahoma Land Exchange—Weyerhaeuser Arkansas Cossatot Lands," dated February 1996 and available for public inspection in appropriate offices of the Secretaries.

(b) EXCHANGE OF OIL AND GAS INTERESTS.—

(1) IN GENERAL.—Subject to paragraph (b)(2) and notwithstanding any other provision of law, at the same time as the exchange for land and mineral interests is carried out pursuant to this section, the Secretary of Agriculture shall exchange all Federal oil and gas interests, including existing leases and other agreements, in the lands described in paragraph (a)(1) for equivalent oil and gas interests, including existing leases and other agreements, owned by Weyerhaeuser in the lands described in paragraph (a)(2).

(2) RESERVATION.—In addition to the exchange of oil and gas interests pursuant to paragraph (b)(1), Weyerhaeuser shall reserve oil and gas interests in and under the lands depicted for reservation upon a map entitled "Arkansas-Oklahoma Land Exchange—Weyerhaeuser Oil and Gas Interest Reservation Lands", dated February 1996 and available for public inspection in appropriate offices of the Secretaries. Such reservation shall be subject to the provisions of this Title and a Memorandum of Understanding jointly agreed to by the Forest Service and Weyerhaeuser. Such Memorandum of Understanding shall be completed no later than 60 days after date of enactment of this Title and shall be transmitted to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The Memorandum of Understanding shall not become effective until 30 days after it is received by the Committees.

(c) GENERAL PROVISIONS.—

(1) MAPS CONTROLLING.—The acreage cited in this Title is approximate. In the case of a discrepancy between the description of lands, mineral interests, or oil and gas interests to be exchanged pursuant to subsection (a) and the lands, mineral interests, or oil and gas interest depicted on a map referred to in such subsection, the map shall control. Subject to the notification required by paragraph (3), the maps referenced in this Title shall be subject to such minor corrections as may be agreed upon by the Secretaries and Weyerhaeuser.

(2) FINAL MAPS.—Not later than 180 days after the conclusion of the exchange required by subsections (a) and (b), the Secretaries shall transmit maps accurately depicting the lands and mineral interests conveyed and transferred pursuant to this Title and the acreage and boundary descriptions of such lands and mineral interests to the Committees on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(3) CANCELLATION.—If, before the exchange has been carried out pursuant to subsections (a) and (b), Weyerhaeuser provides written notification to the Secretaries that Weyerhaeuser no longer intends to complete the exchange, with respect to the lands, mineral interests, and oil and gas interests that would otherwise be subject to the exchange, the status of such lands, mineral interests, and oil and gas interests shall revert to the status of such lands, mineral interests, and oil and gas interests as of the day before the date of enactment of this Title and shall be managed in accordance with applicable law and management plans.

(4) WITHDRAWAL.—Subject to valid existing rights, the lands and interests therein depicted for conveyance to Weyerhaeuser on the maps referenced in subsections (a) and (b) are withdrawn from all forms of entry and appropriation under the public land laws (including the mining laws) and from the operation of mineral leasing and geothermal steam leasing laws effective upon the date of the enactment of this Title. Such withdrawal shall terminate 45 days after completion of the exchange provided for in subsections (a) and (b) or on the date of notification by Weyerhaeuser of a decision not to complete the exchange.

SECTION 3304. DESIGNATION AND USE OF LANDS ACQUIRED BY THE UNITED STATES.

(a) NATIONAL FOREST SYSTEM.—

(1) ADDITION TO THE SYSTEM.—Upon approval and acceptance of title by the Secretary of Agriculture, the 155,000 acres of land conveyed to the United States pursuant to Section 3303(a)(2) (A) and (B) of this Act shall be subject to the Act of March 1, 1911 (commonly known as the "Weeks Law") (36 Stat. 961, as amended), and shall be administered by the Secretary of Agriculture in accordance with the laws and regulations pertaining to the National Forest system.

(2) PLAN AMENDMENTS.—No later than 12 months after the completion of the exchange required by this Title, the Secretary of Agriculture shall begin the process to amend applicable land and resource management plans with public involvement pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (16 U.S.C. 1604).

(b) OTHER.

(1) ADDITION TO THE NATIONAL WILDLIFE REFUGE SYSTEM.—Once acquired by the United States, the 25,000 acres of land identified in section 3303(a)(2)(C), the Arkansas Cossatot lands, shall be managed by the Secretary of the Interior as a component of the Cossatot National Wildlife Refuge in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee).

(2) PLAN PREPARATION.—Within 24 months after the completion of the exchange required by this Title, the Secretary of the Interior shall prepare and implement a single refuge management plan for the Cossatot National Wildlife Refuge, as expanded by this Title. Such plans shall recognize the important public purposes served by the nonconsumptive activities, other recreational activities, and wildlife-related public use, including hunting, fishing, and trapping. The plan shall permit, to the maximum extent practicable, compatible uses to the extent that they are consistent with sound wildlife management and in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws. Any regulations promulgated by the Secretary of the Interior with respect to hunting, fishing, and trapping on those lands shall, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In preparing the management plan and regulations, the Secretary of the Interior shall consult with the Arkansas Game and Fish Commission.

(3) INTERIM USE OF LANDS.—

(A) IN GENERAL.—Except as provided in paragraph (2), during the period beginning on the date of the completion of the exchange of lands required by this Title and ending on the first date of the implementation of the plan prepared under paragraph (2), the Secretary of the Interior shall administer all lands added to the Cossatot National Wildlife Refuge pursuant to this Title in accordance with the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) and other applicable laws.

(B) HUNTING SEASONS.—During the period described in subparagraph (A), the duration of any hunting season on the lands described in subsection (1) shall comport with the applicable State law.

SECTION 3305. OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT.

(a) IN GENERAL.—Upon acceptance of title by the Secretary of Agriculture of the lands conveyed to the United States pursuant to Section 3303(a)(2) (A) and (B), the boundaries of the Ouachita National Forest shall be adjusted to encompass those lands conveyed to the United States generally depicted on the appropriate maps referred to in section 3303(a). Nothing in this section shall limit the authority of the Secretary of Agriculture to adjust the boundary pursuant to section 11 of the Weeks Law of March 1, 1911. For the purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Ouachita National Forest, as adjusted by this Title, shall be considered to be the boundaries of the Forest as of January 1, 1965.

(b) MAPS AND BOUNDARY DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Title, the Secretary of Agriculture shall prepare a boundary description of the lands depicted on the map(s) referred to in section 3303(a)(2) (A) and (B). Such map(s) and boundary description shall have the same force and effect as if included in this Title, except that the Secretary of Agriculture may correct clerical and typographical errors.

Mr. MURKOWSKI. Mr. President, it is my understanding that on Monday the Senate will proceed to the consideration of various bills reported by the

Committee on Energy and Natural Resources. It is my intention at that time to offer an amendment in the nature of a substitute to H.R. 1296, a bill to provide for the administration of certain Presidio properties at minimal cost to the Federal taxpayer, and for other purposes.

TAIWAN CONCURRENT RESOLUTION

THOMAS (AND OTHERS) AMENDMENT NO. 3562

Mr. THOMAS (for himself, Mr. HELMS, Mr. DOLE, Mr. MURKOWSKI, Mr. PELL, Mr. SIMON, Mr. MACK, Mr. GRAMS, Mr. PRESSLER, Mr. BROWN, Mr. LUGAR, Mr. D'AMATO, Mr. WARNER, Mr. FORD, Mr. LIEBERMAN, Mr. ROTH, Mr. NICKLES, Mr. HATCH, Mr. GORTON, Mr. CRAIG, Mr. SANTORUM, Mr. DORGAN, Mr. ROBB, Mr. ROCKEFELLER, Mr. BRYAN, Ms. MOSELEY-BRAUN, Mr. KERRY, Mr. DASCHLE, and Mrs. FEINSTEIN) proposed an amendment to the concurrent resolution (H. Con. Res. 148) expressing the sense of the Congress that the United States is committed to the military stability of the Taiwan Straits and United States military forces should defend Taiwan in the event of invasion, missile attack, or blockade by the People's Republic of China; as follows:

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

"That it is the sense of the Congress—

"(1) to deplore the missile tests and military exercises that the People's Republic of China is conducting from March 8 through March 25, 1996, and view such tests and exercises as potentially serious threats to the peace, security, and stability of Taiwan and not in the spirit of the three United States-China Joint Communiqués;

"(2) to urge the Government of the People's Republic of China to cease its bellicose actions directed at Taiwan and enter instead into meaningful dialogue with the Government of Taiwan at the highest levels, such as through the Straits Exchange Foundation in Taiwan and the Association for Relations Across the Taiwan Strait in Beijing, with an eye towards decreasing tensions and resolving the issue of the future of Taiwan;

"(3) that the President should, consistent with section 3(c) of the Taiwan Relations Act of 1979 (22 U.S.C. 3302(c)), immediately consult with Congress on an appropriate United States response to the tests and exercises should the tests or exercises pose an actual threat to the peace, security, and stability of Taiwan;

"(4) that the President should, consistent with the Taiwan Relations Act of 1979 (22 U.S.C. 3301 et seq.), reexamine the nature and quantity of defense articles and services that may be necessary to enable Taiwan to maintain a sufficient self-defense capability in light of the heightened military threat; and

"(5) that the Government of Taiwan should remain committed to the peaceful resolution of its future relations with the People's Republic of China by mutual decision."

Amend the preamble to read as follows:

"Whereas the People's Republic of China, in a clear attempt to intimidate the people and Government of Taiwan, has over the past 9 months conducted a series of military exercises, including missile tests, within alarmingly close proximity to Taiwan;

"Whereas from March 8 through March 15, 1996, the People's Republic of China conducted a series of missile tests within 25 to 35 miles of the 2 principal northern and southern ports of Taiwan, Kaohsiung and Keelung;

"Whereas on March 12, 1996, the People's Republic of China began an 8-day, live-ammunition, joint sea-and-air military exercise in a 2,390 square mile area in the southern Taiwan Strait;

"Whereas on March 18, 1996, the People's Republic of China began a 7-day, live-ammunition, joint sea-and-air military exercise between Taiwan's islands of Matsu and Wuchu;

"Whereas these tests and exercises are a clear escalation of the attempts by the People's Republic of China to intimidate Taiwan and influence the outcome of the upcoming democratic presidential election in Taiwan;

"Whereas through the administrations of Presidents Nixon, Ford, Carter, Reagan, and Bush, the United States has adhered to a "One China" policy and, during the administration of President Clinton, the United States continues to adhere to the "One China" policy based on the Shanghai Communiqué of February 27, 1972, the Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China of January 1, 1979, and the United States-China Joint Communiqué of August 17, 1982;

"Whereas through the administrations of Presidents Carter, Reagan, and Bush, the United States has adhered to the provisions of the Taiwan Relations Act of 1979, (22 U.S.C. 3301 et seq.) as the basis for continuing commercial, cultural, and other relations between the people of the United States and the people of Taiwan and, during the administration of President Clinton, the United States continues to adhere to the provisions of the Taiwan Relations Act of 1979;

"Whereas relations between the United States and the People's Republic of China rest upon the expectation that the future of Taiwan will be settled solely by peaceful means;

"Whereas the strong interest of the United States in the peaceful settlement of the Taiwan question is one of the central premises of the three United States-China Joint Communiqués and was codified in the Taiwan Relations Act of 1979;

"Whereas the Taiwan Relations Act of 1979 states that peace and stability in the western Pacific "are in the political, security, and economic interests of the United States, and are matters of international concern";

"Whereas the Taiwan Relations Act of 1979 states that the United States considers "any effort to determine the future of Taiwan by other than peaceful means, including by boycotts, or embargoes, a threat to the peace and security of the western Pacific area and of grave concern to the United States";

"Whereas the Taiwan Relations Act of 1979 directs the President to "inform Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom";

"Whereas the Taiwan Relations Act of 1979 further directs that "the President and the Congress shall determine, in accordance with constitutional process, appropriate action by the United States in response to any such danger";

"Whereas the United States, the People's Republic of China, and the Government of Taiwan have each previously expressed their commitment to the resolution of the Taiwan question through peaceful means; and

"Whereas these missile tests and military exercises, and the accompanying statements made by the Government of the People's Republic of China, call into serious question the commitment of China to the peaceful resolution of the Taiwan question: Now, therefore, be it,"

Amend the title so as to read: "Expressing the sense of Congress regarding missile tests and military exercises by the People's Republic of China."

THE ACCELERATED CLEANUP AND ENVIRONMENTAL RESTORATION ACT OF 1996

SMITH (AND CHAFEE) AMENDMENT NO. 3563

(Ordered to lie on the table.)

Mr. SMITH (for himself and Mr. CHAFEE) submitted an amendment intended to be proposed by them to the bill (S. 1285) to reauthorize and amend the Comprehensive Environmental Recovery, Compensation, and Liability Act of 1980, and for other purpose; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Accelerated Cleanup and Environmental Restoration Act of 1996".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—COMMUNITY PARTICIPATION

Sec. 101. Community response organizations; technical assistance grants; improvement of public participation in the Superfund decision-making process.

TITLE II—STATE ROLE

Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

TITLE III—VOLUNTARY CLEANUP

Sec. 301. Assistance for qualifying State voluntary response programs.
Sec. 302. Brownfield characterization program.
Sec. 303. Treatment of security interest holders and fiduciaries as owners or operators.
Sec. 304. Federal Deposit Insurance Act amendment.
Sec. 305. Contiguous properties.
Sec. 306. Prospective purchasers and windfall liens.
Sec. 307. Safe harbor innocent landholders.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

Sec. 401. Definitions.
Sec. 402. Selection and implementation of remedial actions.
Sec. 403. Remedy selection methodology.
Sec. 404. Remedy selection procedures.
Sec. 405. Completion of physical construction and delisting.
Sec. 406. Transition rules for facilities currently involved in remedy selection.

Sec. 407. Judicial review.
Sec. 408. National Priorities List.

TITLE V—LIABILITY

Sec. 501. Liability exceptions and limitations.
Sec. 502. Contribution from the Fund for certain retroactive liability.
Sec. 503. Allocation of liability for certain facilities.
Sec. 504. Liability of response action contractors.
Sec. 505. Release of evidence.
Sec. 506. Contribution protection.
Sec. 507. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.
Sec. 508. Common carriers.
Sec. 509. Limitation on liability for response costs.

TITLE VI—FEDERAL FACILITIES

Sec. 601. Transfer of authorities.
Sec. 602. Limitation on criminal liability of Federal officers, employees, and agents.
Sec. 603. Innovative technologies for remedial action at Federal facilities.
Sec. 604. Federal facility listing.
Sec. 605. Federal facility listing deferral.
Sec. 606. Transfers of uncontaminated property.

TITLE VII—NATURAL RESOURCE DAMAGES

Sec. 701. Restoration of natural resources.
Sec. 702. Assessment of damages.
Sec. 703. Consistency between response actions and resource restoration standards and alternatives.
Sec. 704. Miscellaneous amendments.

TITLE VIII—MISCELLANEOUS

Sec. 801. Result-oriented cleanups.
Sec. 802. National Priorities List.
Sec. 803. Obligations from the fund for response actions.
Sec. 804. Remediation waste.

TITLE IX—FUNDING

Subtitle A—General Provisions

Sec. 901. Authorization of appropriations from the Fund.
Sec. 902. Orphan share funding.
Sec. 903. Department of Health and Human Services.
Sec. 904. Limitations on research, development, and demonstration programs.
Sec. 905. Authorization of appropriations from general revenues.
Sec. 906. Additional limitations.
Sec. 907. Reimbursement of potentially responsible parties.

TITLE I—COMMUNITY PARTICIPATION

SEC. 101. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

"(e) COMMUNITY RESPONSE ORGANIZATIONS.—

"(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

"(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

"(B) at the request of—

"(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

"(ii) a representative group of the potentially responsible parties; or

"(iii) any local governmental entity with jurisdiction over the facility.

"(2) RESPONSIBILITIES.—A community response organization shall—

"(A) solicit the views of the local community on various issues affecting the development and implementation of remedial actions at the facility;

"(B) serve as a conduit of information to and from the community to appropriate Federal, State, and local agencies and potentially responsible parties;

"(C) serve as a representative of the local community during the remedial action planning and implementation process; and

"(D) provide reasonable notice of and opportunities to participate in the meetings and other activities of the community response organization.

"(3) ACCESS TO DOCUMENTS.—The Administrator shall provide a community response organization access to documents in possession of the Federal Government regarding response actions at the facility that do not relate to liability and are not protected from disclosure as confidential business information.

"(4) COMMUNITY RESPONSE ORGANIZATION INPUT.—

"(A) CONSULTATION.—The Administrator (or if the remedial action plan is being prepared or implemented by a party other than the Administrator, the other party) shall—

"(i) consult with the community response organization in developing and implementing the remedial action plan; and

"(ii) keep the community response organization informed of progress in the development and implementation of the remedial action plan.

"(B) TIMELY SUBMISSION OF COMMENTS.—The community response organization shall provide its comments, information, and recommendations in a timely manner to the Administrator (and other party).

"(C) CONSENSUS.—The community response organization shall attempt to achieve consensus among its members before providing comments and recommendations to the Administrator (and other party), but if consensus cannot be reached, the community response organization shall report or allow presentation of divergent views.

"(5) TECHNICAL ASSISTANCE GRANTS.—

"(A) PREFERRED RECIPIENT.—If a community response organization exists for a facility, the community response organization shall be the preferred recipient of a technical assistance grant under subsection (f).

"(B) PRIOR AWARD.—If a technical assistance grant concerning a facility has been awarded prior to establishment of a community response organization—

"(i) the recipient of the grant shall coordinate its activities and share information and technical expertise with the community response organization; and

"(ii) 1 person representing the grant recipient shall serve on the community response organization.

"(6) MEMBERSHIP.—

"(A) NUMBER.—The Administrator shall select not less than 15 nor more than 20 persons to serve on a community response organization.

"(B) NOTICE.—Before selecting members of the community response organization, the Administrator shall provide a notice of intent to establish a community response organization to persons who reside in the local community.

"(C) REPRESENTED GROUPS.—The Administrator shall, to the extent practicable, appoint members to the community response organization from each of the following groups of persons:

"(i) Persons who reside or own residential property near the facility;

"(ii) Persons who, although they may not reside or own property near the facility, may be adversely affected by a release from the facility.

"(iii) Persons who are members of the local public health or medical community and are practicing in the community.

"(iv) Representatives of Indian tribes or Indian communities that reside or own property near the facility or that may be adversely affected by a release from the facility.

"(v) Local representatives of citizen, environmental, or public interest groups with members residing in the community.

"(vi) Representatives of local governments, such as city or county governments, or both, and any other governmental unit that regulates land use or land use planning in the vicinity of the facility.

"(vii) Members of the local business community.

"(D) PROPORTION.—Local residents shall comprise not less than 60 percent of the membership of a community response organization.

"(E) PAY.—Members of a community response organization shall serve without pay.

"(7) PARTICIPATION BY GOVERNMENT REPRESENTATIVES.—Representatives of the Administrator, the Administrator of the Agency for Toxic Substances and Disease Registry, other Federal agencies, and the State, as appropriate, shall participate in community response organization meetings to provide information and technical expertise, but shall not be members of the community response organization.

"(8) ADMINISTRATIVE SUPPORT.—The Administrator shall provide administrative services and meeting facilities for community response organizations.

"(9) FACA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to a community response organization.

"(f) TECHNICAL ASSISTANCE GRANTS.—

"(1) DEFINITIONS.—In this subsection:

"(A) AFFECTED CITIZEN GROUP.—The term 'affected citizen group' means a group of 2 or more individuals who may be affected by the release or threatened release of a hazardous substance, pollutant, or contaminant at any facility on the State Registry or the National Priorities List.

"(B) TECHNICAL ASSISTANCE GRANT.—The term 'technical assistance grant' means a grant made under paragraph (2).

"(2) AUTHORITY.—

"(A) IN GENERAL.—In accordance with a regulation issued by the Administrator, the Administrator may make grants available to affected citizen groups.

"(B) AVAILABILITY OF APPLICATION PROCESS.—To ensure that the application process for a technical assistance grant is available to all affected citizen groups, the Administrator shall periodically review the process and, based on the review, implement appropriate changes to improve availability.

"(3) SPECIAL RULES.—

"(A) NO MATCHING CONTRIBUTION.—No matching contribution shall be required for a technical assistance grant.

"(B) AVAILABILITY IN ADVANCE.—The Administrator shall make all or a portion (but

not less than $5,000 or 10 percent of the grant amount, whichever is greater) of the grant amount available to a grant recipient in advance of the total expenditures to be covered by the grant.

"(4) LIMIT PER FACILITY.—

"(A) 1 GRANT PER FACILITY.—Not more than 1 technical assistance grant may be made with respect to a single facility, but the grant may be renewed to facilitate public participation at all stages of response action.

"(B) DURATION.—The Administrator shall set a limit by regulation on the number of years for which a technical assistance grant may be made available based on the duration, type, and extent of response action at a facility.

"(5) AVAILABILITY FOR FACILITIES NOT YET LISTED.—Subject to paragraph (6), 1 or more technical assistance grants shall be made available to affected citizen groups in communities containing facilities on the State Registry as of the date on which the grant is awarded.

"(6) FUNDING LIMIT.—

"(A) PERCENTAGE OF TOTAL APPROPRIATIONS.—Not more than 2 percent of the funds made available to carry out this Act for a fiscal year may be used to make technical assistance grants.

"(B) ALLOCATION BETWEEN LISTED AND UNLISTED FACILITIES.—Not more than the portion of funds equal to ⅛ of the total amount of funds used to make technical assistance grants for a fiscal year may be used for technical assistance grants with respect to facilities not listed on the National Priorities List.

"(7) FUNDING AMOUNT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amount of a technical assistance grant may not exceed $50,000 for a single grant recipient.

"(B) INCREASE.—The Administrator may increase the amount of a technical assistance grant, or renew a previous technical assistance grant, up to a total grant amount not exceeding $100,000, to reflect the complexity of the response action, the nature and extent of contamination at the facility, the level of facility activity, projected total needs as requested by the grant recipient, the size and diversity of the affected population, and the ability of the grant recipient to identify and raise funds from other non-Federal sources.

"(8) USE OF TECHNICAL ASSISTANCE GRANTS.—

"(A) PERMITTED USE.—A technical assistance grant may be used to obtain technical assistance in interpreting information with regard to—

"(i) the nature of the hazardous substances located at a facility;

"(ii) the work plan;

"(iii) the facility evaluation;

"(iv) a proposed remedial action plan, a remedial action plan, and a final remedial design for a facility;

"(v) response actions carried out at the facility; and

"(vi) operation and maintenance activities at the facility.

"(B) PROHIBITED USE.—A technical assistance grant may not be used for the purpose of collecting field sampling data.

"(9) GRANT GUIDELINES.—

"(A) IN GENERAL.—Not later than 90 days after the date of enactment of this paragraph, the Administrator shall develop and publish guidelines concerning the management of technical assistance grants by grant recipients.

"(B) HIRING OF EXPERTS.—A recipient of a technical assistance grant that hires technical experts and other experts shall act in accordance with the guidelines under subparagraph (A).

"(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.—

"(1) IN GENERAL.—

"(A) MEETINGS AND NOTICE.—In order to provide an opportunity for meaningful public participation in every significant phase of response activities under this Act, the Administrator shall provide the opportunity for, and publish notice of, public meetings before or during performance of—

"(i) a facility evaluation, as appropriate;

"(ii) announcement of a proposed remedial action plan; and

"(iii) completion of a final remedial design.

"(B) INFORMATION.—A public meeting under subparagraph (A) shall be designed to obtain information from the community, and disseminate information to the community, with respect to a facility concerning the Administrator's facility activities and pending decisions.

"(2) PARTICIPANTS AND SUBJECT.—The Administrator shall provide reasonable notice of an opportunity for public participation in meetings in which—

"(A) the participants include Federal officials (or State officials, if the State is conducting response actions under a delegated or authorized program or through facility referral) with authority to make significant decisions affecting a response action, and other persons (unless all of such other persons are coregulators that are not potentially responsible parties or are government contractors); and

"(B) the subject of the meeting involves discussions directly affecting—

"(i) a legally enforceable work plan document, or any significant amendment to the document, for a removal, facility evaluation, proposed remedial action plan, final remedial design, or remedial action for a facility on the National Priorities List; or

"(ii) the final record of information on which the Administrator will base a hazard ranking system score for a facility.

"(3) LIMITATION.—Nothing in this subsection shall be construed—

"(A) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that concerns only the potential liability or settlement of potential liability of any person, whether prior to or following the commencement of litigation or administrative enforcement action;

"(B) to provide for public participation in or otherwise affect any negotiation, meeting, or other discussion that is attended only by representatives of the United States (or of a department, agency, or instrumentality of the United States) with attorneys representing the United States (or of a department, agency, or instrumentality of the United States); or

"(C) to waive, compromise, or affect any privilege that may be applicable to a communication related to an activity described in subparagraph (A) or (B).

"(4) EVALUATION.—

"(A) IN GENERAL.—To the extent practicable, before and during the facility evaluation, the Administrator shall solicit and evaluate concerns, interests, and information from the community.

"(B) PROCEDURE.—An evaluation under subparagraph (A) shall include, as appropriate—

"(i) face-to-face community surveys to identify the location of private drinking water wells, historic and current or potential use of water, and other environmental resources in the community;

"(ii) a public meeting;

"(iii) written responses to significant concerns; and

"(iv) other appropriate participatory activities.

"(5) VIEWS AND PREFERENCES.—

"(A) SOLICITATION.—During the facility evaluation, the Administrator (or other person performing the facility evaluation) shall solicit the views and preferences of the community on the remediation and disposition of hazardous substances or pollutants or contaminants at the facility.

"(B) CONSIDERATION.—The views and preferences of the community shall be described in the facility evaluation and considered in the screening of remedial alternatives for the facility.

"(6) ALTERNATIVES.—Members of the community may propose remedial action alternatives, and the Administrator shall consider such alternatives in the same manner as the Administrator considers alternatives proposed by potentially responsible parties.

"(7) INFORMATION.—

"(A) THE COMMUNITY.—The Administrator, with the assistance of the community response organization under subsection (g) if there is one, shall provide information to the community and seek comment from the community throughout all significant phases of the response action at the facility.

"(B) TECHNICAL STAFF.—The Administrator shall ensure that information gathered from the community during community outreach efforts reaches appropriate technical staff in a timely and effective manner.

"(C) RESPONSES.—The Administrator shall ensure that reasonable written or other appropriate responses will be made to such information.

"(8) NONPRIVILEGED INFORMATION.—Throughout all phases of response action at a facility, the Administrator shall make all nonprivileged information relating to a facility available to the public for inspection and copying without the need to file a formal request, subject to reasonable service charges as appropriate.

"(9) PRESENTATION.—

"(A) DOCUMENTS.—

"(i) IN GENERAL.—The Administrator, in carrying out responsibilities under this Act, shall ensure that the presentation of information on risk is complete and informative.

"(ii) RISK.—To the extent feasible, documents prepared by the Administrator and made available to the public that purport to describe the degree of risk to human health shall, at a minimum, state—

"(I) the distribution of risk, including upperbound and lowerbound estimates of the incremental risk;

"(II) the population or populations addressed by any estimates of the risk;

"(III) the expected risk or central estimate of the risk for the specific population;

"(IV) the reasonable range or other description of uncertainties in the assessment process; and

"(V) the assumptions that form the basis for any estimates of such risk posed by the facility and a brief explanation of the assumptions.

"(B) COMPARISONS.—The Administrator, in carrying out responsibilities under this Act, shall provide comparisons of the level of risk from hazardous substances found at the facility to comparable levels of risk from those hazardous substances ordinarily encountered by the general public through other sources of exposure.

"(10) REQUIREMENTS.—

"(A) LENGTHY REMOVAL ACTIONS.—Notwithstanding any other provision of this subsection, in the case of a removal action taken in accordance with section 104 that is expected to require more than 180 days to complete, and in any case in which implementation of a removal action is expected to obviate or that in fact obviates the need to conduct a long-term remedial action—

"(i) the Administrator shall, to the maximum extent practicable, allow for public participation consistent with paragraph (1); and

"(ii) the removal action shall achieve the goals of protecting human health and the environment in accordance with section 121(a)(1).

"(B) OTHER REMOVAL ACTIONS.—In the case of all other removal actions, the Administrator may provide the community with notice of the anticipated removal action and a public comment period, as appropriate.".

(b) ISSUANCE OF GUIDELINES.—The Administrator of the Environmental Protection Agency shall issue guidelines under section 117(e)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 90 days after the date of enactment of this Act.

TITLE II—STATE ROLE

SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

(a) IN GENERAL.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 302, is amended by adding at the end the following:

"SEC. 135. DELEGATION TO THE STATES OF AUTHORITIES WITH RESPECT TO NATIONAL PRIORITIES LIST FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) COMPREHENSIVE DELEGATION STATE.—The term 'comprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform all of the categories of delegable authority.

"(2) DELEGABLE AUTHORITY.—The term 'delegable authority' means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

"(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

"(i) a preliminary assessment or facility evaluation under section 104;

"(ii) facility characterization under section 104;

"(iii) a remedial investigation under section 104;

"(iv) a facility-specific risk evaluation under section 129(b)(4); and

"(v) any other authority identified by the Administrator under subsection (b).

"(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

"(i) a feasibility study under section 104; and

"(ii)(I) remedial action selection under section 121 (including issuance of a record of decision); or

"(II) remedial action planning under section 129(b)(5); and

"(iii) any other authority identified by the Administrator under subsection (b).

"(C) CATEGORY C.—All authorities necessary to perform remedial design, including—

"(i) remedial design under section 121; and

"(ii) any other authority identified by the Administrator under subsection (b).

"(D) CATEGORY D.—All authorities necessary to perform remedial action and operation and maintenance, including—

"(i) a removal under section 104;

"(ii) a remedial action under section 104 or section 10 (a) or (b);

"(iii) operation and maintenance under section 104(c); and

"(iv) any other authority identified by the Administrator under subsection (b).

"(E) CATEGORY E.—All authorities necessary to perform information collection and allocation of liability, including—

"(i) information collection activity under section 104(e);

"(ii) allocation of liability under section 132;

"(iii) a search for potentially responsible parties under section 104 or 107;

"(iv) settlement under section 122; and

"(v) any other authority identified by the Administrator under subsection (b).

"(F) CATEGORY F.—All authorities necessary to perform enforcement, including—

"(i) issuance of an order under section 106(a);

"(ii) a response action cost recovery under section 107;

"(iii) imposition of a civil penalty or award under section 109 (a)(1)(D) or (b)(4);

"(iv) settlement under section 122; and

"(v) any other authority identified by the Administrator under subsection (b).

"(3) DELEGATED STATE.—The term 'delegated State' means a State to which delegable authority has been delegated under subsection (c), except as may be provided in a delegation agreement in the case of a limited delegation of authority under subsection (c)(5).

"(4) DELEGATED AUTHORITY.—The term 'delegated authority' means a delegable authority that has been delegated to a delegated State under this section.

"(5) DELEGATED FACILITY.—The term 'delegated facility' means a non-federal listed facility with respect to which a delegable authority has been delegated to a State under this section.

"(6) NONCOMPREHENSIVE DELEGATION STATE.—The term 'noncomprehensive delegation State', with respect to a facility, means a State to which the Administrator has delegated authority to perform fewer than all of the categories of delegable authority.

"(7) NONDELEGABLE AUTHORITY.—The term 'nondelegable authority' means authority to—

"(A) make grants to community response organizations under section 117; and

"(B) conduct research and development activities under any provision of this Act.

"(8) NON-FEDERAL LISTED FACILITY.—The term 'non-federal listed facility' means a facility that—

"(A) is not owned or operated by a department, agency, or instrumentality of the United States in any branch of the Government; and

"(B) is listed on the National Priorities List.

"(b) IDENTIFICATION OF DELEGABLE AUTHORITIES.—

"(1) IN GENERAL.—The President shall by regulation identify all of the authorities of the Administrator that shall be included in a delegation of any category of delegable authority described in subsection (a)(2).

"(2) LIMITATION.—The Administrator shall not identify a nondelegable authority for inclusion in a delegation of any category of delegable authority.

"(c) DELEGATION OF AUTHORITY.—

"(1) IN GENERAL.—Pursuant to an approved State application, the Administrator shall delegate authority to perform 1 or more delegable authorities with respect to 1 or more non-Federal listed facilities in the State.

"(2) APPLICATION.—An application under paragraph (1) shall—

"(A) identify each non-Federal listed facility for which delegation is requested;

"(B) identify each delegable authority that is requested to be delegated for each non-Federal listed facility for which delegation is requested; and

"(C) certify that the State, supported by such documentation as the State, in consultation with the Administrator, considers to be appropriate, has—

"(i) statutory and regulatory authority (including appropriate enforcement authority) to perform the requested delegable authorities in a manner that is protective of human health and the environment;

"(ii) resources in place to adequately administer and enforce the authorities; and

"(iii) procedures to ensure public notice and, as appropriate, opportunity for comment on remedial action plans, consistent with sections 117 and 129.

"(3) APPROVAL OF APPLICATION.—

"(A) IN GENERAL.—Not later than 60 days after receiving an application under paragraph (2) by a State that is authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), and not later than 120 days after receiving an application from a State that is not authorized to administer and enforce the corrective action requirements of a hazardous waste program under section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6926), unless the State agrees to a greater length of time for the Administrator to make a determination, the Administrator shall—

"(i) issue a notice of approval of the application (including approval or disapproval regarding any or all of the facilities with respect to which a delegation of authority is requested or with respect to any or all of the authorities that are requested to be delegated); or

"(ii) if the Administrator determines that the State does not have adequate legal authority, financial and personnel resources, organization, or expertise to administer and enforce any of the requested delegable authority, issue a notice of disapproval, including an explanation of the basis for the determination.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of all or any portion of an application within the applicable time period under subparagraph (A), the application shall be deemed to have been granted.

"(C) RESUBMISSION OF APPLICATION.—

"(i) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(ii) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the applicable time period under subparagraph (A), the resubmitted application shall be deemed to have been granted.

"(D) NO ADDITIONAL TERMS OR CONDITIONS.—The Administrator shall not impose any term or condition on the approval of an application that meets the requirements stated in paragraph (2) (except that any technical deficiencies in the application be corrected).

"(E) JUDICIAL REVIEW.—The State (but no other person) shall be entitled to judicial review under section 113(b) of a disapproval of a resubmitted application.

"(4) DELEGATION AGREEMENT.—On approval of a delegation of authority under this section, the Administrator and the delegated State shall enter into a delegation agreement that identifies each category of delegable authority that is delegated with respect to each delegated facility.

"(5) LIMITED DELEGATION.—

"(A) IN GENERAL.—In the case of a State that does not meet the requirements of paragraph (2)(C) the Administrator may delegate to the State limited authority to perform, ensure the performance of, or supervise or otherwise participate in the performance of 1 or more delegable authorities, as appropriate in view of the extent to which the State has the required legal authority, financial and personnel resources, organization, and expertise.

"(B) SPECIAL PROVISIONS.—In the case of a limited delegation of authority to a State under subparagraph (A), the Administrator shall specify the extent to which the State shall be considered to be a delegated State for the purposes of this Act.

"(d) PERFORMANCE OF DELEGATED AUTHORITIES.—

"(1) IN GENERAL.—A delegated State shall have sole authority (except as provided in paragraph (6)(B), subsection (e)(4), and subsection (g)) to perform a delegated authority with respect to a delegated facility.

"(2) AGREEMENTS FOR PERFORMANCE OF DELEGATED AUTHORITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a delegated State may enter into an agreement with a political subdivision of the State, an interstate body comprised of that State and another delegated State or States, or a combination of such subdivisions or interstate bodies, providing for the performance of any category of delegated authority with respect to a delegated facility in the State if the parties to the agreement agree in the agreement to undertake response actions that are consistent with this Act.

"(B) NO AGREEMENT WITH POTENTIALLY RESPONSIBLE PARTY.—A delegated State shall not enter into an agreement under subparagraph (A) with a political subdivision or interstate body that is, or includes as a component an entity that is, a potentially responsible party with respect to a delegated facility covered by the agreement.

"(C) CONTINUING RESPONSIBILITY.—A delegated State that enters into an agreement under subparagraph (A)—

"(i) shall exercise supervision over and approve the activities of the parties to the agreement; and

"(ii) shall remain responsible for ensuring performance of the delegated authority.

"(3) COMPLIANCE WITH ACT.—

"(A) NONCOMPREHENSIVE DELEGATION STATES.—A noncomprehensive delegation State shall implement each applicable provision of this Act (including regulations and guidance issued by the Administrator) so as to perform each delegated authority with respect to a delegated facility in the same manner as would the Administrator with respect to a facility that is not a delegated facility.

"(B) COMPREHENSIVE DELEGATION STATES.—

"(i) IN GENERAL.—A comprehensive delegation State shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121.

"(ii) COSTLIER REMEDIAL ACTION.—

"(I) IN GENERAL.—A delegated State may select a remedial action for a delegated facility that has a greater response cost (including operation and maintenance costs) than the response cost for a remedial action that would be selected by the Administrator under section 121, if the State pays for the difference in cost.

"(II) NO COST RECOVERY.—If a delegated State selects a more costly remedial action under subclause (I), the State shall not be entitled to seek cost recovery under this Act or any other Federal or State law from any other person for the difference in cost.

"(4) JUDICIAL REVIEW.—An order that is issued under section 106 by a delegated State with respect to a delegated facility shall be reviewable only in United States district court under section 113.

"(5) DELISTING OF NATIONAL PRIORITIES LIST FACILITIES.—

"(A) DELISTING.—After notice and an opportunity for public comment, a delegated State may remove from the National Priorities List all or part of a delegated facility—

"(i) if the State makes a finding that no further action is needed to be taken at the facility (or part of the facility) under any applicable law to protect human health and the environment consistent with section 121(a)(1) and (2);

"(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the cleanup will proceed at the facility under section 3004 (u) or (v) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), (v)); or

"(iii) if the State is a comprehensive delegation State with respect to the facility.

"(B) EFFECT OF DELISTING.—A delisting under subparagraph (A) (ii) or (iii) shall not affect—

"(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

"(ii) the eligibility of the State for funding under this Act;

"(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

"(iv) the enforceability of any consent order or decree relating to the facility.

"(C) NO RELISTING.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not relist on the National Priorities List a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A).

"(ii) CLEANUP NOT COMPLETED.—The Administrator may relist a facility or part of a facility that has been removed from the National Priorities List under subparagraph (A) if cleanup is not completed in accordance with the enforceable agreement under subparagraph (A)(ii).

"(6) COST RECOVERY.—

"(A) RECOVERY BY A DELEGATED STATE.—Of the amount of any response costs recovered from a responsible party by a delegated State for a delegated facility under section 107—

"(i) 25 percent of the amount of any Federal response cost recovered with respect to a facility, plus an amount equal to the amount of response costs incurred by the State with respect to the facility, may be retained by the State; and

"(ii) the remainder shall be deposited in the Hazardous Substances Superfund established under subchapter A of chapter 98 of the Internal Revenue Code of 1986.

"(B) RECOVERY BY THE ADMINISTRATOR.—

"(i) IN GENERAL.—The Administrator may take action under section 107 to recover response costs from a responsible party for a delegated facility if—

"(I) the delegated State notifies the Administrator in writing that the delegated State does not intend to pursue action for recovery of response costs under section 107 against the responsible party; or

"(II) the delegated State fails to take action to recover response costs within a reasonable time in light of applicable statutes of limitation.

"(ii) NOTICE.—If the Administrator proposes to commence an action for recovery of response costs under section 107, the Administrator shall give the State written notice and allow the State at least 90 days after receipt of the notice to commence the action.

"(iii) NO FURTHER ACTION.—If the Administrator takes action against a potentially responsible party under section 107 relating to a release from a delegated facility, the delegated State may not take any other action for recovery of response costs relating to that release under this Act or any other Federal or State law.

"(e) FEDERAL RESPONSIBILITIES AND AUTHORITIES.—

"(1) REVIEW USE OF FUNDS.—

"(A) IN GENERAL.—The Administrator shall review the certification submitted by the Governor under subsection (f)(8) not later than 120 days after the date of its submission.

"(B) FINDING OF USE OF FUNDS INCONSISTENT WITH THIS ACT.—If the Administrator finds that funds were used in a manner that is inconsistent with this Act, the Administrator shall notify the Governor in writing not later than 120 days after receiving the Governor's certification.

"(C) EXPLANATION.—Not later than 30 days after receiving a notice under subparagraph (B), the Governor shall—

"(i) explain why the Administrator's finding is in error; or

"(ii) explain to the Administrator's satisfaction how any misapplication or misuse of funds will be corrected.

"(D) FAILURE TO EXPLAIN.—If the Governor fails to make an explanation under subparagraph (C) to the Administrator's satisfaction, the Administrator may request reimbursement of such amount of funds as the Administrator finds was misapplied or misused.

"(E) REPAYMENT OF FUNDS.—If the Administrator fails to obtain reimbursement from the State within a reasonable period of time, the Administrator may, after 30 days' notice to the State, bring a civil action in United States district court to recover from the delegated State any funds that were advanced for a purpose or were used for a purpose or in a manner that is inconsistent with this Act.

"(2) WITHDRAWAL OF DELEGATION OF AUTHORITY.—

"(A) DELEGATED STATES.—If at any time the Administrator finds that contrary to a certification made under subsection (c)(2), a delegated State—

"(i) lacks the required financial and personnel resources, organization, or expertise to administer and enforce the requested delegated authorities;

"(ii) does not have adequate legal authority to request and accept delegation; or

"(iii) is failing to materially carry out the State's delegated authorities,

the Administrator may withdraw a delegation of authority with respect to a delegated facility after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(B) STATES WITH LIMITED DELEGATIONS OF AUTHORITY.—If the Administrator finds that a State to which a limited delegation of authority was made under subsection (c)(5) has materially breached the delegation agreement, the Administrator may withdraw the delegation after providing notice and opportunity to correct deficiencies under subparagraph (D).

"(C) NO WITHDRAWAL WITH 1 YEAR OF APPROVAL.—The Administrator shall not withdraw a delegation of authority within 1 year after the date on which the application for delegation is approved (including approval under subsection (c)(3) (B) or (C)(ii)).

"(D) NOTICE AND OPPORTUNITY TO CORRECT.—If the Administrator proposes to withdraw a delegation of authority for any or all delegated facilities, the Administrator shall give the State written notice and allow the State at least 90 days after the date of receipt of the notice to correct the deficiencies cited in the notice.

"(E) FAILURE TO CORRECT.—If the Administrator finds that the deficiencies have not been corrected within the time specified in a notice under subparagraph (D), the Administrator may withdraw delegation of authority after providing public notice and opportunity for comment.

"(F) JUDICIAL REVIEW.—A decision of the Administrator to withdraw a delegation of authority shall be subject to judicial review under section 113(b).

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of the Administrator under this Act to—

"(A) take a response action at a facility listed on the National Priorities List in a State to which a delegation of authority has not been made under this section or at a facility not included in a delegation of authority; or

"(B) perform a delegable authority with respect to a facility that is not included among the authorities delegated to a State with respect to the facility.

"(4) EMERGENCY REMOVAL.—

"(A) NOTICE.—Before performing an emergency removal action under section 104 at a delegated facility, the Administrator shall notify the delegated States of the Administrator's intention to perform the removal.

"(B) STATE ACTION.—If, after receiving a notice under subparagraph (A), the delegated State notifies the Administrator within 48 hours that the State intends to take action to perform an emergency removal at the delegated facility, the Administrator shall not perform the emergency removal action unless the Administrator determines that the delegated State has failed to act within a reasonable period of time to perform the emergency removal.

"(C) IMMEDIATE AND SIGNIFICANT DANGER.—If the Administrator finds that an emergency at a delegated facility poses an immediate and significant danger to human health or the environment, the Administrator shall not be required to provide notice under subparagraph (A).

"(5) PROHIBITED ACTIONS.—Except as provided in subsections (d)(6)(B), (e)(4), and (g) or except with the concurrence of the delegated State, the President, the Administrator, and the Attorney General shall not take any action under section 104, 106, 107, 109, 121, or 122 in performance of a delegable authority that has been delegated to a State with respect to a delegated facility.

"(f) FUNDING.—

"(1) IN GENERAL.—The Administrator shall provide grants to or enter into contracts or cooperative agreements with delegated States to carry out this section.

"(2) NO CLAIM AGAINST FUND.—Notwithstanding any other law, funds to be granted under this subsection shall not constitute a claim against the Fund or the United States.

"(3) DETERMINATION OF COSTS ON A FACILITY-SPECIFIC BASIS.—The Administrator shall—

"(A) determine—

"(i) the delegable authorities the costs of performing which it is practicable to determine on a facility-specific basis; and

"(ii) the delegable authorities the costs of performing which it is not practicable to determine on a facility-specific basis; and

"(B) publish a list describing the delegable authorities in each category.

"(4) FACILITY-SPECIFIC GRANTS.—The costs described in paragraph (3)(A)(i) shall be funded as such costs arise with respect to each delegated facility.

"(5) NONFACILITY-SPECIFIC GRANTS.—

"(A) IN GENERAL.—The costs described in paragraph (3)(A)(ii) shall be funded through nonfacility-specific grants under this paragraph.

"(B) FORMULA.—The Administrator shall establish a formula under which funds available for nonfacility-specific grants shall be allocated among the delegated States, taking into consideration—

"(i) the cost of administering the delegated authority;

"(ii) the number of sites for which the State has been delegated authority;

"(iii) the types of activities for which the State has been delegated authority;

"(iv) the number of facilities within the State that are listed on the National Priorities List or are delegated facilities under section 127(d)(5);

"(v) the number of other high priority facilities within the State;

"(vi) the need for the development of the State program;

"(vii) the need for additional personnel;

"(viii) the amount of resources available through State programs for the cleanup of contaminated sites; and

"(ix) the benefit to human health and the environment of providing the funding.

"(6) PERMITTED USE OF GRANT FUNDS.—A delegated State may use grant funds, in accordance with this Act and the National Contingency Plan, to take any action or perform any duty necessary to implement the authority delegated to the State under this section.

"(7) COST SHARE.—

"(A) ASSURANCE.—A delegated State to which a grant is made under this subsection shall provide an assurance that the State will pay any amount required under section 104(c)(3).

"(B) PROHIBITED USE OF GRANT FUNDS.—A delegated State to which a grant is made under this subsection may not use grant funds to pay any amount required under section 104(c)(3).

"(8) CERTIFICATION OF USE OF FUNDS.—

"(A) IN GENERAL.—Not later than 1 year after the date on which a delegated State receives funds under this subsection, and annually thereafter, the Governor of the State shall submit to the Administrator—

"(i) a certification that the State has used the funds in accordance with the requirements of this Act and the National Contingency Plan; and

"(ii) information describing the manner in which the State used the funds.

"(B) REGULATIONS.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a regulation describing with particularity the information that a State shall be required to provide under subparagraph (A)(ii).

"(g) COOPERATIVE AGREEMENTS.—Nothing in this section shall affect the authority of the Administrator under section 104(d)(1) to enter into a cooperative agreement with a State, a political subdivision of a State, or an Indian tribe to carry out actions under section 104.

"(h) NON-NATIONAL PRIORITIES LIST FACILITIES.—

"(1) DEFINITIONS.—In this subsection, the term 'non-National Priorities List facility' means a facility that is not, and never has been, listed on the National Priorities List and that is not owned or operated by a department, agency, or instrumentality of the United States.

"(2) FINALITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a determination that a response action at a non-National Priorities List facility or portion of a non-National Priorities List facility is complete under State law is final, and the facility shall not be subject to further response action notwithstanding any provision of this Act or any other Federal law.

"(B) EXCEPTION FOR EMERGENCY REMOVALS.—The Administrator may conduct an emergency removal action under the authority of section 104 subject to the notice requirement of section 135(e)(4) at a non-National Priorities List facility.".

(b) STATE COST SHARE.—Section 104(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)) is amended—

(1) by striking "(c)(1) Unless" and inserting the following:

"(c) MISCELLANEOUS LIMITATIONS AND REQUIREMENTS.—

"(1) CONTINUANCE OF OBLIGATIONS FROM FUND.—Unless";

(2) by striking "(2) The President" and inserting the following:

"(2) CONSULTATION.—The President"; and

(3) by striking paragraph (3) and inserting the following:

"(3) STATE COST SHARE.—

"(A) IN GENERAL.—The Administrator shall not provide any remedial action under this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the Administrator providing assurances deemed adequate by the Administrator that the State will pay, in cash or through in-kind contributions, a specified percentage of the costs of the remedial action and operation and maintenance costs.

"(B) ACTIVITIES WITH RESPECT TO WHICH STATE COST SHARE IS REQUIRED.—No State cost share shall be required except for remedial actions under section 104 and facilities with respect to which there is an exemption under section 107(r).

"(C) SPECIFIED PERCENTAGE.—

"(i) IN GENERAL.—The specified percentage of costs that a State shall be required to share shall be the lower of 10 percent or the percentage determined under clause (ii).

"(ii) MAXIMUM IN ACCORDANCE WITH LAW PRIOR TO 1996 AMENDMENTS.—

"(I) On petition by a State, the Director of the Office of Management and Budget (referred to in this clause as the 'Director'),

after providing public notice and opportunity for comment, shall establish a cost share percentage, which shall be uniform for all facilities in the State, at the percentage rate at which the total amount of anticipated payments by the State under the cost share for all facilities in the State for which a cost share is required most closely approximates the total amount of estimated cost share payments by the State for facilities that would have been required under cost share requirements that were applicable prior to the date of enactment of this subparagraph, adjusted to reflect the extent to which the State's ability to recover costs under this Act were reduced by reason of enactment of amendments to this Act by the Accelerated Cleanup and Environmental Restoration Act of 1996.

"(II) The Director may adjust a State's cost share under this clause not more frequently than every 3 years.

"(D) INDIAN TRIBES.—In the case of remedial action to be taken on land or water held by an Indian Tribe, held by the United States in trust for Indians, held by a member of an Indian Tribe (if the land or water is subject to a trust restriction on alienation), or otherwise within the borders of an Indian reservation, the requirements of this paragraph shall not apply.".

(c) USES OF FUND.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by inserting after paragraph (6) the following:

"(7) GRANTS TO DELEGATED STATES.—Making a grant to a delegated State under section 135(f).".

(d) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—Section 114(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9614(b)) is amended by striking "removal" each place it appears and inserting "response".

(2) CONFORMING AMENDMENT.—Section 101(37)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(37)(B)) is amended by striking "section 114(c)" and inserting "section 114(b)".

TITLE III—VOLUNTARY CLEANUP

SEC. 301. ASSISTANCE FOR QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

"(39) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—The term 'qualifying State voluntary response program' means a State program that includes the elements described in section 133(b).".

(b) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 501, is amended by adding at the end the following:

"SEC. 133. QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.

"(a) ASSISTANCE TO STATES.—The Administrator shall provide technical and other assistance to States to establish and expand qualifying State voluntary response programs that include the elements listed in subsection (b).

"(b) ELEMENTS.—The elements of a qualifying State voluntary response program are the following:

"(1) Opportunities for technical assistance for voluntary response actions.

"(2) Adequate opportunities for public participation, including prior notice and opportunity for comment in appropriate circumstances, in selecting response actions.

"(3) Streamlined procedures to ensure expeditious voluntary response actions.

"(4) Oversight and enforcement authorities or other mechanisms that are adequate to ensure that—

"(A) voluntary response actions will protect human health and the environment and be conducted in accordance with applicable Federal and State law; and

"(B) if the person conducting the voluntary response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

"(5) Mechanisms for approval of a voluntary response action plan.

"(6) A requirement for certification or similar documentation from the State to the person conducting the voluntary response action indicating that the response is complete.".

(c) FUNDING.—Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611), as amended by section 201(b), is amended by inserting after paragraph (7) the following:

"(8) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAMS.—For assistance to States to establish and administer qualifying State voluntary response programs, during the first 5 full fiscal years following the date of enactment of this subparagraph, in a total amount to all States that is not less than 2 percent and not more than 5 percent of the amount available in the Fund for each such fiscal year, distributed among each of the States that notifies the Administrator of the State's intent to establish a qualifying State voluntary response program and each of the States with a qualifying State voluntary response program in the amount that is equal to the total amount multiplied by a fraction—

"(A) the numerator of which is the number of facilities in the State that, as of September 29, 1995, were listed on the Comprehensive Environmental Response, Compensation, and Liability Information System (not including facilities that are listed on the National Priorities List); and

"(B) the denominator of which is the total number of such facilities in the United States.".

(d) COMPLIANCE WITH ACT.—A person that conducts a voluntary response action under this section at a facility that is listed or proposed for listing on the National Priorities List shall implement applicable provisions of this Act or of similar provisions of State law in a manner comporting with State policy, so long as the remedial action that is selected protects human health and the environment to the same extent as would a remedial action selected by the Administrator under section 121(a).

SEC. 302. BROWNFIELD CHARACTERIZATION PROGRAM.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 301(b), is amended by adding at the end the following:

"SEC. 134. BROWNFIELD CHARACTERIZATION PROGRAM.

"(a) DEFINITIONS.—In this section:

"(1) ADMINISTRATIVE COST.—The term 'administrative cost' does not include the cost of—

"(A) investigation and identification of the extent of contamination;

"(B) design and performance of a response action; or

"(C) monitoring of natural resources.

"(2) BROWNFIELD FACILITY.—The term 'brownfield facility' means—

"(A) a parcel of land that contains an abandoned, idled, or underused commercial or industrial facility, the expansion or redevelopment of which is complicated by the presence or potential presence of a hazardous substance; but

"(B) does not include—

"(i) a facility that is the subject of a removal or planned removal under title I;

"(ii) a facility that is listed or has been proposed for listing on the National Priorities List or that has been delisted under section 135(d)(5);

"(iii) a facility that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u) or 6928(h)) at the time at which an application for a grant or loan concerning the facility is submitted under this section;

"(iv) a land disposal unit with respect to which—

"(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

"(II) closure requirements have been specified in a closure plan or permit;

"(v) a facility with respect to which an administrative order on consent or judicial consent decree requiring cleanup has been entered into by the United States under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.);

"(vi) a facility that is owned or operated by a department, agency, or instrumentality of the United States; or

"(vii) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

"(3) ELIGIBLE ENTITY.—The term 'eligible entity' means—

"(A) a general purpose unit of local government;

"(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

"(C) a regional council or group of general purpose units of local government;

"(D) a redevelopment agency that is chartered or otherwise sanctioned by a State; and

"(E) an Indian tribe.

"(b) BROWNFIELD CHARACTERIZATION PROGRAM.—

"(1) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to provide interest-free loans for the site characterization and assessment of brownfield facilities.

"(2) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT.—

"(A) IN GENERAL.—On approval of an application made by an eligible entity, the Administrator may make interest-free loans out of the Fund to the eligible entity to be used for the site characterization and assessment of 1 or more brownfield facilities.

"(B) APPROPRIATE INQUIRY.—A site characterization and assessment carried out with the use of a loan under subparagraph (A) shall be performed in accordance with section 101(35)(B).

"(C) REPAYMENT.—

"(i) IN GENERAL.—An eligible entity that receives a loan under subparagraph (A) shall agree to repay the full amount of the loan within 10 years after the date on which the loan is made.

"(ii) DEPOSIT IN FUND.—Repayments on a loan under subparagraph (A) shall be deposited in the Fund.

"(3) HAZARDOUS SUBSTANCE SUPERFUND.—Notwithstanding section 111 of this Act or any provision of the Superfund Amendments and Reauthorization Act of 1986 (100 Stat. 1613), there is authorized to be appropriated out of the Fund $15,000,000 for each of the first 5 fiscal years beginning after the date of enactment of this section, to be used for making interest-free loans under paragraph (2).

"(4) MAXIMUM LOAN AMOUNT.—A loan under subparagraph (A) shall not exceed, with respect to each brownfield facility covered by the loan, $100,000 for any fiscal year or $200,000 in total.

"(5) SUNSET.—No amount shall be available from the Fund for purposes of this section after the fifth fiscal year after the date of enactment of this section.

"(6) PROHIBITION.—No part of a loan under this section may be used for payment of penalties, fines, or administrative costs.

"(7) AUDITS.—The Inspector General of the Environmental Protection Agency shall audit all loans made under paragraph (2) to ensure that all funds are used for the purposes described in this section and that all loans are repaid in accordance with paragraph (2).

"(8) AGREEMENTS.—Each loan made under this section shall be subject to an agreement that—

"(A) requires the eligible entity to comply with all applicable State laws (including regulations);

"(B) requires that the eligible entity shall use the loan exclusively for purposes specified in paragraph (2); and

"(C) contains such other terms and conditions as the Administrator determines to be necessary to protect the financial interests of the United States and to carry out the purposes of this section.

"(9) LEVERAGING.—An eligible entity that receives a loan under paragraph (1) may use the loaned funds for part of a project at a brownfield facility for which funding is received from other sources, but the loan funds shall be used only for the purposes described in paragraph (2).

"(c) LOAN APPLICATIONS.—

"(1) IN GENERAL.—Any eligible entity may submit an application to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, for a loan under this section for 1 or more brownfield facilities.

"(2) APPLICATION REQUIREMENTS.—An application for a loan under this section shall include—

"(A) an identification of each brownfield facility for which the loan is sought and a description of the redevelopment plan for the area or areas in which each facility is located, including a description of the nature and extent of any known or suspected environmental contamination within the area;

"(B) an analysis that demonstrates the potential of the grant to stimulate economic development on completion of the planned response action, including a projection of the number of jobs expected to be created at the facility after remediation and redevelopment and, to the extent feasible, a description of the type and skill level of the jobs and a projection of the increases in revenues accruing to Federal, State, and local governments from the jobs; and

"(C) information relevant to the ranking criteria stated in paragraph (4).

"(3) APPROVAL.—

"(A) INITIAL LOANS.—On or about March 30 and September 30 of the first fiscal year following the date of enactment of this section, the Administrator shall make loans under this section to eligible entities that submit applications before those dates that the Administrator determines have the highest rankings under ranking criteria established under paragraph (4).

"(B) SUBSEQUENT LOANS.—Beginning with the second fiscal year following the date of enactment of this section, the Administrator shall make an annual evaluation of each application received during the prior fiscal year and make loans under this section to eligible entities that submit applications during the prior year that the Administrator determines have the highest rankings under the ranking criteria established under paragraph (4).

"(4) RANKING CRITERIA.—The Administrator shall establish a system for ranking loan applications that includes the following criteria:

"(A) The extent to which a loan will stimulate the availability of other funds for environmental remediation and subsequent redevelopment of the area in which the brownfield facilities are located.

"(B) The potential of the development plan for the area in which the brownfield facilities are located to stimulate economic development of the area on completion of the cleanup, such as the following:

"(i) The relative increase in the estimated fair market value of the area as a result of any necessary response action.

"(ii) The potential of a loan to create new or expand existing business and employment opportunities (particularly full-time employment opportunities) on completion of any necessary response action.

"(iii) The estimated additional tax revenues expected to be generated by economic redevelopment in the area in which a brownfield facility is located.

"(iv) The estimated extent to which a loan would facilitate the identification of or facilitate a reduction of health and environmental risks.

"(v) The financial involvement of the State and local government in any response action planned for a brownfield facility and the extent to which the response action and the proposed redevelopment is consistent with any applicable State or local community economic development plan.

"(vi) The extent to which the site characterization and assessment or response action and subsequent development of a brownfield facility involves the active participation and support of the local community.

"(vii) Such other factors as the Administrator considers appropriate to carry out the purposes of this section.".

SEC. 303. TREATMENT OF SECURITY INTEREST HOLDERS AND FIDUCIARIES AS OWNERS OR OPERATORS.

(a) DEFINITION OF OWNER OR OPERATOR.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 301(a), is amended—

(1) in paragraph (20)—

(A) in subparagraph (A) by striking the second sentence; and

(B) by adding at the end the following:

"(E) SECURITY INTEREST HOLDERS.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a person that, without participating in the management of a vessel or facility, holds an indicium of ownership primarily to protect the person's security interest in a vessel or facility.

"(ii) PARTICIPATING IN MANAGEMENT.—A security interest holder—

"(I) shall be considered to be participating in management of a vessel or facility only if the security interest holder has undertaken—

"(aa) responsibility for the hazardous substance handling or disposal practices of the vessel or facility; or

"(bb) overall management of the vessel or facility encompassing day-to-day decision-making over environmental compliance or over an operational function (including functions such as those of a plant manager, operations manager, chief operating officer, or chief executive officer), as opposed to financial and administrative aspects, of a vessel or facility; and

"(II) shall not be considered to be participating in management solely on the ground that the security interest holder—

"(aa) serves in a capacity or has the ability to influence or the right to control the operation of a vessel or facility if that capacity, ability, or right is not exercised;

"(bb) acts, or causes or requires another person to act, to comply with an applicable law or to respond lawfully to disposal of a hazardous substance;

"(cc) performs an act or omits to act in any way with respect to a vessel or facility prior to the time at which a security interest is created in a vessel or facility;

"(dd) holds, abandons, or releases a security interest;

"(ee) includes in the terms of an extension of credit, or in a contract or security agreement relating to an extension of credit, a covenant, warranty, or other term or condition that relates to environmental compliance;

"(ff) monitors or enforces a term or condition of an extension of credit or a security interest;

"(gg) monitors or undertakes 1 or more inspections of a vessel or facility;

"(hh) requires or conducts a response action or other lawful means of addressing a release or threatened release of a hazardous substance in connection with a vessel or facility prior to, during, or on the expiration of the term of an extension of credit;

"(ii) provides financial or other advice or counseling in an effort to mitigate, prevent, or cure a default or diminution in the value of a vessel or facility;

"(jj) exercises forbearance by restructuring, renegotiating, or otherwise agreeing to alter a term or condition of an extension of credit or a security interest; or

"(kk) exercises any remedy that may be available under law for the breach of a term or condition of an extension of credit or a security agreement.

"(iii) FORECLOSURE.—Legal or equitable title acquired by a security interest holder through foreclosure (or the equivalent of foreclosure) shall be considered to be held primarily to protect a security interest if the holder undertakes to sell, re-lease, or otherwise divest the vessel or facility in a reasonably expeditious manner on commercially reasonable terms.

"(iv) DEFINITION OF SECURITY INTEREST.—In this subparagraph, the term 'security interest' includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease, or any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation.

"(F) FIDUCIARIES.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a fiduciary that holds legal or equitable title to, is the mortgagee or secured party with respect to, controls, or manages, directly or indirectly, a vessel or facility for the purpose of administering an estate or trust of which the vessel or facility is a part."; and

(2) by adding at the end the following:

"(40) FIDUCIARY.—The term 'fiduciary' means a person that is acting in the capacity of—

"(A) an executor or administrator of an estate, including a voluntary executor or a voluntary administrator;

"(B) a guardian;

"(C) a conservator;

"(D) a trustee under a will or a trust agreement under which the trustee takes legal or equitable title to, or otherwise controls or manages, a vessel or facility for the purpose of protecting or conserving the vessel or facility under the rules applied in State court;

"(E) a court-appointed receiver;

"(F) a trustee appointed in proceedings under title 11, United States Code;

"(G) an assignee or a trustee acting under an assignment made for the benefit of creditors; or

"(H) a trustee, or a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender.".

(b) LIABILITY OF FIDUCIARIES AND LENDERS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

"(n) LIABILITY OF FIDUCIARIES.—

"(1) IN GENERAL.—The liability of a fiduciary that is liable under any other provision of this Act for the release or threatened release of a hazardous substance from a vessel or facility held by a fiduciary may not exceed the assets held by the fiduciary that are available to indemnify the fiduciary.

"(2) NO INDIVIDUAL LIABILITY.—Subject to the other provisions of this subsection, a fiduciary shall not be liable in an individual capacity under this Act.

"(3) EXCEPTIONS.—This subsection does not preclude a claim under this Act against—

"(A) the assets of the estate or trust administered by a fiduciary;

"(B) a nonemployee agent or independent contractor retained by a fiduciary; or

"(C) a fiduciary that causes or contributes to a release or threatened release of a hazardous substance.

"(4) SAFE HARBOR.—Subject to paragraph (5), a fiduciary shall not be liable in an individual capacity under this Act for—

"(A) undertaking or directing another to undertake a response action under section 107(d)(1) or under the direction of an on-scene coordinator designated by the Administrator or the Coast Guard to coordinate and direct responses under subpart D of the National Contingency Plan or by the lead agency to coordinate and direct removal actions under subpart E of the National Contingency Plan;

"(B) undertaking or directing another to undertake any other lawful means of addressing a hazardous substance in connection with a vessel or facility;

"(C) terminating the fiduciary relationship;

"(D) including, monitoring, or enforcing a covenant, warranty, or other term or condition in the terms of a fiduciary agreement that relates to compliance with environmental laws;

"(E) monitoring or undertaking 1 or more inspections of a vessel or facility;

"(F) providing financial or other advice or counseling to any party to the fiduciary relationship, including the settlor or beneficiary;

"(G) restructuring, renegotiating, or otherwise altering a term or condition of the fiduciary relationship;

"(H) administering a vessel or facility that was contaminated before the period of service of the fiduciary began; or

"(I) declining to take any of the actions described in subparagraphs (B) through (H).

"(5) DUE CARE.—This subsection does not limit the liability of a fiduciary if the fiduciary fails to exercise due care and the failure causes or contributes to the release of a hazardous substance.

"(6) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

"(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

"(B) create any liability for any person; or

"(C) create a private right of action against a fiduciary or against a Federal agency that regulates lenders.

"(o) LIABILITY OF LENDERS.—

"(1) DEFINITIONS.—In this subsection:

"(A) ACTUAL BENEFIT.—The term 'actual benefit' means the net gain, if any, realized by a lender due to an action.

"(B) EXTENSION OF CREDIT.—The term 'extension of credit' includes a lease finance transaction—

"(i) in which the lessor does not initially select the leased vessel or facility and does not during the lease term control the daily operations or maintenance of the vessel or facility; or

"(ii) that conforms to all regulations issued by any appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))) and any appropriate State banking regulatory authority.

"(C) FORECLOSURE.—The term 'foreclosure' means the acquisition of a vessel or facility through—

"(i) purchase at sale under a judgment or decree, a power of sale, a nonjudicial foreclosure sale, or from a trustee, deed in lieu of foreclosure, or similar conveyance, or through repossession, if the vessel or facility was security for an extension of credit previously contracted;

"(ii) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

"(iii) any other formal or informal manner by which a person acquires, for subsequent disposition, possession of collateral in order to protect the security interest of the person.

"(D) LENDER.—The term 'lender' means—

"(i) a person that makes a bona fide extension of credit to, or takes a security interest from, another party;

"(ii) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner is engaged in the business of buying or selling loans or interests in loans;

"(iii) a person engaged in the business of insuring or guaranteeing against a default in the repayment of an extension of credit, or acting as a surety with respect to an extension of credit, to another party; and

"(iv) a person regularly engaged in the business of providing title insurance that acquires a vessel or facility as a result of an assignment or conveyance in the course of underwriting a claim or claim settlement.

"(E) NET GAIN.—The term 'net gain' means an amount not in excess of the amount realized by a lender on the sale of a vessel or facility less acquisition, holding, and disposition costs.

"(F) VESSEL OR FACILITY ACQUIRED THROUGH FORECLOSURE.—The term 'vessel or facility acquired through foreclosure'—

"(i) means a vessel or facility that is acquired by a lender through foreclosure from a person that is not affiliated with the lender; but

"(ii) does not include such a vessel or facility if the lender does not seek to sell or otherwise divest the vessel or facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

"(2) LIABILITY LIMITATION.—

"(A) IN GENERAL.—The liability of a lender that is liable under any other provision of this Act for the release or threatened release of a hazardous substance at, from, or in connection with a vessel or facility shall be limited to the amount described in subparagraph (E) if the vessel or facility is—

"(i) a vessel or facility acquired through foreclosure;

"(ii) a vessel or facility subject to a security interest held by the lender;

"(iii) a vessel or facility held by a lessor under the terms of an extension of credit; or

"(iv) a vessel or facility subject to financial control or financial oversight under the terms of an extension of credit.

"(B) AMOUNT.—The amount described in this subparagraph is the excess of the fair market value of a vessel or facility on the date on which the liability of a lender is determined over the fair market value of the vessel or facility on the date that is 180 days before the date on which the response action is initiated, not to exceed the amount that the lender realizes on the sale of the vessel or facility after subtracting acquisition, holding, and disposition costs.

"(3) EXCLUSION.—This subsection does not limit the liability of a lender that causes or contributes to the release or threatened release of a hazardous substance.

"(4) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to—

"(A) affect the rights or immunities or other defenses that are available under this Act or other applicable law to any person;

"(B) create any liability for any person; or

"(C) create a private right of action against a lender or against a Federal agency that regulates lenders.".

SEC. 304. FEDERAL DEPOSIT INSURANCE ACT AMENDMENT.

The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

"SEC. 45. FEDERAL BANKING AND LENDING AGENCY LIABILITY.

"(a) DEFINITIONS.—In this section:

"(1) FEDERAL BANKING OR LENDING AGENCY.—The term 'Federal banking or lending agency'—

"(A) means the Corporation, the Resolution Trust Corporation, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, a Federal Reserve Bank, a Federal Home Loan Bank, the Department of Housing and Urban Development, the National Credit Union Administration Board, the Farm Credit Administration, the Farm Credit System Insurance Corporation, the Farm Credit System Assistance Board, the Farmers Home Administration, the Rural Electrification Administration, the Small Business Administration, and any other Federal agency acting in a similar capacity, in any of their capacities, and their agents or appointees; and

"(B) includes a first subsequent purchaser of the vessel or facility from a Federal banking or lending agency, unless the purchaser—

"(i) would otherwise be liable or potentially liable for all or part of the costs of the removal, remedial, corrective, or other response action due to a prior relationship with the vessel or facility;

"(ii) is or was affiliated with or related to a party described in clause (i);

"(iii) fails to agree to take reasonable steps necessary to remedy the release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

"(iv) causes or contributes to any additional release or threatened release on the vessel or facility.

"(2) FACILITY.—The term 'facility' has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

"(3) HAZARDOUS SUBSTANCE.—The term 'hazardous substance' means a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)).

"(4) RELEASE.—The term 'release' has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

"(5) RESPONSE ACTION.—The term 'response action' has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

"(6) VESSEL.—The term 'vessel' has the meaning stated in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).

"(b) FEDERAL BANKING AND LENDING AGENCIES NOT STRICTLY LIABLE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a Federal banking or lending agency shall not be liable under section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606, 9607) for the release or threatened release of a hazardous substance at or from a vessel or facility (including a right or interest in a vessel or facility) acquired—

"(A) in connection with the exercise of receivership or conservatorship authority, or the liquidation or winding up of the affairs of an insured depository institution, including a subsidiary of an insured depository institution;

"(B) in connection with the provision of a loan, a discount, an advance, a guarantee, insurance, or other financial assistance; or

"(C) in connection with a vessel or facility received in a civil or criminal proceeding, or administrative enforcement action, whether by settlement or by order.

"(2) ACTIVE CAUSATION.—Subject to section 107(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(d)), a Federal banking or lending agency that causes or contributes to a release or threatened release of a hazardous substance may be liable for a response action pertaining to the release or threatened release.

"(3) FEDERAL OR STATE ACTION.—Notwithstanding subsection (a)(1)(B), if a Federal agency or State environmental agency is required to take a response action because a subsequent purchaser—

"(A) fails to agree to take reasonable steps necessary to remedy a release or threatened release or to protect public health and safety in a manner consistent with the purposes of applicable environmental laws; or

"(B) causes or contributes to any additional release or threatened release on the vessel or facility,

the subsequent purchaser shall reimburse the Federal agency or State environmental agency for the costs of the response action in an amount not to exceed the increase in the fair market value of the vessel or facility attributable to the response action.

"(c) LIEN EXEMPTION.—Notwithstanding any other law, a vessel or facility held by a subsequent purchaser described in subsection (a)(1)(B) or held by a Federal banking or lending agency shall not be subject to a lien for costs or damages associated with the release or threatened release of a hazardous substance existing at the time of the transfer.

"(d) EXEMPTION FROM COVENANTS TO REMEDIATE.—Notwithstanding section 120, a Federal banking or lending agency shall be exempt from any law requiring the agency to grant a covenant warranting that a response action has been, or will in the future be, taken with respect to a vessel or facility acquired in a manner described in subsection (b)(1).

"(e) RULES OF CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) affect the rights or immunities or other defenses that are available to any party under this Act, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or any other law;

"(2) create any liability for any party;

"(3) create a private right of action against an insured depository institution or lender, a Federal banking or lending agency, or any other party, except as provided in subsection (b)(3);

"(4) preempt, affect, apply to, or modify a State law or a right, cause of action, or obligation under State law, except that the liability of a Federal banking or lending agency for a response action under a State law shall not exceed the value of the interest of the agency in the asset giving rise to the liability; or

"(5) preclude a Federal banking or lending agency from agreeing with a State to transfer a vessel or facility to the State in lieu of any liability that might otherwise be imposed under State law.".

SEC. 305. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)), as amended by section 303(b), is amended by adding at the end the following:

"(p) CONTIGUOUS PROPERTIES.—

"(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR.—A person that owns or operates real property that is contiguous to or otherwise similarly situated with respect to real property on which there has been a release or threatened release of a hazardous substance and that is or may be contaminated by the release shall not be considered to be an owner or operator of a vessel or facility under subsection (a) (1) or (2) solely by reason of the contamination if—

"(A) the person did not cause, contribute, or consent to the release or threatened release; and

"(B) the person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.

"(2) COOPERATION, ASSISTANCE, AND ACCESS.—Notwithstanding paragraph (1), a person described in paragraph (1) shall provide full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(3) ASSURANCES.—The Administrator may—

"(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

"(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).".

SEC. 306. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 303(a)(2), is amended by adding at the end the following:

"(41) BONA FIDE PROSPECTIVE PURCHASER.—The term 'bona fide prospective purchaser' means a person that acquires ownership of a facility after the date of enactment of this paragraph, or a tenant of such a person, that establishes each of the following by a preponderance of the evidence:

"(A) DISPOSAL PRIOR TO ACQUISITION.—All active disposal of hazardous substances at the facility occurred before the person acquired the facility.

"(B) INQUIRIES.—

"(i) IN GENERAL.—The person made all appropriate inquiries into the previous ownership and uses of the facility and the facility's real property in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The standards and practices referred to in paragraph (35)(B)(ii) or those issued or adopted by the Administrator under that paragraph shall be considered to satisfy the requirements of this subparagraph.

"(iii) RESIDENTIAL USE.—In the case of property for residential or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

"(C) NOTICES.—The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

"(D) CARE.—The person exercised appropriate care with respect to each hazardous

substance found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release and prevent or limit human or natural resource exposure to any previously released hazardous substance.

"(E) COOPERATION, ASSISTANCE, AND ACCESS.—The person provides full cooperation, assistance, and facility access to the persons that are responsible for response actions at the facility, including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility.

"(F) RELATIONSHIP.—The person is not liable, and is not affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed.".

(b) AMENDMENT.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 305, is amended by adding at the end the following:

"(q) PROSPECTIVE PURCHASER AND WINDFALL LIEN.—

"(1) LIMITATION ON LIABILITY.—Notwithstanding subsection (a), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

"(2) LIEN.—If there are unrecovered response costs at a facility for which an owner of the facility is not liable by reason of subsection (n)(1)(C) and each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may obtain from appropriate responsible party a lien on any other property or other assurances of payment satisfactory to the Administrator, for such unrecovered costs.

"(3) CONDITIONS.—The conditions referred to in paragraph (1) are the following:

"(A) RESPONSE ACTION.—A response action for which there are unrecovered costs is carried out at the facility.

"(B) FAIR MARKET VALUE.—The response action increases the fair market value of the facility above the fair market value of the facility that existed 180 days before the response action was initiated.

"(C) SALE.—A sale or other disposition of all or a portion of the facility has occurred.

"(4) AMOUNT.—A lien under paragraph (2)—

"(A) shall not exceed the increase in fair market value of the property attributable to the response action at the time of a subsequent sale or other disposition of the property;

"(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

"(C) shall be subject to the requirements of subsection (1)(3); and

"(D) shall continue until the earlier of satisfaction of the lien or recovery of all response costs incurred at the facility.".

SEC. 307. SAFE HARBOR INNOCENT LANDHOLDERS.

(a) AMENDMENT.—Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended by striking subparagraph (B) and inserting the following:

"(B) KNOWLEDGE OF INQUIRY REQUIREMENT.—

"(i) ALL APPROPRIATE INQUIRIES.—To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must show that, at or prior to the date on which the defendant acquired the facility, the defendant undertook all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

"(ii) STANDARDS AND PRACTICES.—The Administrator shall by regulation establish as standards and practices for the purpose of clause (i)—

"(I) the American Society for Testing and Materials (ASTM) Standard E1527-94, entitled 'Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'; or

"(II) alternative standards and practices under clause (iii).

"(iii) ALTERNATIVE STANDARDS AND PRACTICES.—

"(I) IN GENERAL.—The Administrator may by regulation issue alternative standards and practices or designate standards developed by other organizations than the American Society for Testing and Materials after conducting a study of commercial and industrial practices concerning the transfer of real property in the United States.

"(II) CONSIDERATIONS.—In issuing or designating alternative standards and practices under subclause (I), the Administrator shall consider including each of the following:

"(aa) The results of an inquiry by an environmental professional.

"(bb) Interviews with past and present owners, operators, and occupants of the facility and the facility's real property for the purpose of gathering information regarding the potential for contamination at the facility and the facility's real property.

"(cc) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records to determine previous uses and occupancies of the real property since the property was first developed.

"(dd) Searches for recorded environmental cleanup liens, filed under Federal, State, or local law, against the facility or the facility's real property.

"(ee) Reviews of Federal, State, and local government records (such as waste disposal records), underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility or the facility's real property.

"(ff) Visual inspections of the facility and facility's real property and of adjoining properties.

"(gg) Specialized knowledge or experience on the part of the defendant.

"(hh) The relationship of the purchase price to the value of the property if the property was uncontaminated.

"(ii) Commonly known or reasonably ascertainable information about the property.

"(jj) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate investigation.

"(iv) SITE INSPECTION AND TITLE SEARCH.—In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.".

(b) STANDARDS AND PRACTICES.—

(1) ESTABLISHMENT BY REGULATION.—The Administrator of the Environmental Protection Agency shall issue the regulation required by section 101(35)(B)(ii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), not later than 1 year after the date of enactment of this Act.

(2) INTERIM STANDARDS AND PRACTICES.—Until the Administrator issues the regulation described in paragraph (1), in making a determination under section 101(35)(B)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as added by subsection (a), there shall be taken into account—

(A) any specialized knowledge or experience on the part of the defendant;

(B) the relationship of the purchase price to the value of the property if the property was uncontaminated;

(C) commonly known or reasonably ascertainable information about the property;

(D) the degree of obviousness of the presence or likely presence of contamination at the property; and

(E) the ability to detect the contamination by appropriate investigation.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

SEC. 401. DEFINITIONS.

Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 306(a), is amended by adding at the end the following:

"(42) ACTUAL OR PLANNED OR REASONABLY ANTICIPATED FUTURE USE OF THE LAND AND WATER RESOURCES.—The term 'actual or planned or reasonably anticipated future use of the land and water resources' means—

"(A) the actual use of the land, surface water, and ground water at a facility on the date of submittal of the proposed remedial action plan; and

"(B)(i) with respect to land—

"(I) the use of land that is authorized by the zoning or land use decisions formally adopted, at or prior to the time of the initiation of the facility evaluation, by the local land use planning authority for a facility and the land immediately adjacent to the facility; and

"(II) any other reasonably anticipated use that the local land use authority, in consultation with the community response organization (if any), determines to have a substantial probability of occurring based on recent (as of the time of the determination) development patterns in the area in which the facility is located and on population projections for the area; and

"(ii) with respect to water resources, the future use of the surface water and ground water that is potentially affected by releases from a facility that is reasonably anticipated, by a local government or other governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the earlier of—

"(I) the date of issuance of the first record of decision; or

"(II) the initiation of the facility evaluation.

"(43) SIGNIFICANT ECOSYSTEM.—The term 'significant ecosystem', for the purpose of section 121(a)(1)(B), means an ecosystem that exhibits a uniqueness, particular value, or historical presence or that is widely recognized as a significant resource at the national, State or local level.

"(44) VALUABLE ECOSYSTEM.—The term 'valuable ecosystem' means an ecosystem that is a known source of significant human or ecological benefits for its function.

"(45) SUSTAINABLE ECOSYSTEM.—The term 'sustainable ecosystem' means an ecosystem that has redundancy and resiliency sufficient to enable the ecosystem to continue to function and provide benefits within the normal range of its variability notwithstanding exposure to hazardous substances resulting from releases.

"(46) ECOLOGICAL RESOURCE.—The term 'ecological resource' means land, fish, wildlife, biota, air, surface water, and ground water within an ecosystem.

"(47) SIGNIFICANT RISK TO ECOLOGICAL RESOURCES THAT ARE NECESSARY TO THE SUSTAINABILITY OF A SIGNIFICANT ECOSYSTEM OR VALUABLE ECOSYSTEM.—The term 'significant risk to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem' means the risk associated with exposures and impacts resulting from the release of hazardous substances which together reduce or eliminate the sustainability (within the meaning of paragraph (45)) of a significant ecosystem or valuable ecosystem.".

SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

"SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

"(a) GENERAL RULES.—

"(1) SELECTION OF MOST COST-EFFECTIVE REMEDIAL ACTION THAT PROTECTS HUMAN HEALTH AND THE ENVIRONMENT.—

"(A) IN GENERAL.—The Administrator shall select a remedial action that is the most cost-effective means of achieving the goals of protecting human health and the environment as stated in subparagraph (B) using the criteria stated in subparagraph (C).

"(B) GOALS OF PROTECTING HUMAN HEALTH AND THE ENVIRONMENT.—

"(i) PROTECTION OF HUMAN HEALTH.—A remedial action shall be considered to protect human health if, considering the expected exposures associated with the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action achieves a residual risk—

"(I) from exposure to carcinogenic hazardous substances, pollutants, or contaminants such that cumulative lifetime additional cancer from exposure to hazardous substances from releases at the facility range from 10^{-4} to 10^{-6} for the affected population; and

"(II) from exposure to noncarcinogenic hazardous substances, pollutants, or contaminants at the facility that does not pose an appreciable risk of deleterious effects.

"(ii) PROTECTION OF THE ENVIRONMENT.—A remedial action shall be considered to protect the environment if, based on the actual or planned or reasonably anticipated future use of the land and water resources, the remedial action will protect against significant risks to ecological resources that are necessary to the sustainability of a significant ecosystem or valuable ecosystem and will not interfere with a sustainable functional ecosystem.

"(C) COMPLIANCE WITH FEDERAL AND STATE LAWS.—

"(i) SUBSTANTIVE REQUIREMENTS.—

"(I) IN GENERAL.—Subject to clause (iii), a remedial action shall—

"(aa) comply with the substantive requirements of all promulgated standards, requirements, criteria, and limitations under each Federal law and each State law relating to the environment or to the siting of facilities (including a State law that imposes a more stringent standard, requirement, criterion, or limitation than Federal law) that is applicable to the conduct or operation of the remedial action or to determination of the level of cleanup for remedial actions; and

"(bb) comply with or attain any other promulgated standard, requirement, criterion, or limitation under any State law relating to the environment or siting of facilities that applies to the conduct or operation of remedial actions under this Act, as determined by the State, after the date of enactment of the Accelerated Cleanup and Environmental Restoration Act of 1996, through a rulemaking procedure that includes public notice, comment, and written response comment, and opportunity for judicial review, but only if the State demonstrates that the standard, requirement, criterion, or limitation is consistently applied to remedial actions under State law.

"(II) IDENTIFICATION OF FACILITIES.—Compliance with a State standard, requirement, criterion, or limitation described in subclause (I) shall be required at a facility if the standard, requirement, criterion, or limitation has been identified by the State to the Administrator in a timely manner as being applicable to the facility.

"(III) PUBLISHED LISTS.—Each State shall publish a comprehensive list of the standards, requirements, criteria, and limitations that the State may apply to remedial actions under this Act, and shall revise the list periodically, as requested by the Administrator.

"(IV) CONTAMINATED MEDIA.—Compliance with this clause shall not be required with respect to return, replacement, or disposal of contaminated media or residuals of contaminated media into the same media in or very near then-existing areas of contamination onsite at a facility.

"(ii) PROCEDURAL REQUIREMENTS.—Procedural requirements of Federal and State standards, requirements, criteria, and limitations (including permitting requirements) shall not apply to response actions conducted onsite at a facility.

"(iii) WAIVER PROVISIONS.—

"(I) DETERMINATION BY THE PRESIDENT.—The Administrator shall evaluate and determine if it is not appropriate for a remedial action to attain a Federal or State standard, requirement, criterion, or limitation as required by clause (i).

"(II) SELECTION OF REMEDIAL ACTION THAT DOES NOT COMPLY.—The Administrator may select for a facility a remedial action that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

"(aa) IMPROPER IDENTIFICATION.—The standard, requirement, criterion, or limitation was improperly identified as an applicable requirement under clause (i)(I)(aa) and fails to comply with the rulemaking requirements of clause (i)(I)(bb).

"(bb) PART OF REMEDIAL ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the total remedial action is completed.

"(cc) GREATER RISK.—Compliance with or attainment of the standard, requirement, criterion, or limitation at the facility will result in greater risk to human health or the environment than alternative options.

"(dd) TECHNICALLY IMPRACTICABILITY.—Compliance with or attainment of the standard, requirement, criterion, or limitation is technically infeasible from an engineering perspective or unreasonably costly.

"(ee) EQUIVALENT TO STANDARD OF PERFORMANCE.—The selected remedial action will attain a standard of performance that is equivalent to that required under a standard, requirement, criterion, or limitation described in clause (i) through use of another approach.

"(ff) INCONSISTENT APPLICATION.—With respect to a State standard, requirement, criterion, limitation, or level, the State has not consistently applied (or demonstrated the intention to apply consistently) the standard, requirement, criterion, or limitation or level in similar circumstances to other remedial actions in the State.

"(gg) BALANCE.—In the case of a remedial action to be undertaken solely under section 104 or 132 using amounts from the Fund, a selection of a remedial action that complies with or attains a standard, requirement, criterion, or limitation described in clause (i) will not provide a balance between the need for protection of public health and welfare and the environment at the facility, and the need to make amounts from the Fund available to respond to other facilities that may present a threat to public health or welfare or the environment, taking into consideration the relative immediacy of the threats presented by the various facilities.

"(III) PUBLICATION.—The Administrator shall publish any findings made under subclause (II), including an explanation and appropriate documentation.

"(D) REMEDY SELECTION CRITERIA.—In selecting a remedial action from among alternatives that achieve the goals stated in subparagraph (B), the Administrator shall balance the following factors, ensuring that no single factor predominates over the others:

"(i) The effectiveness of the remedy in protecting human health and the environment.

"(ii) The reliability of the remedial action in achieving the protectiveness standards over the long term.

"(iii) Any short-term risk to the affected community, those engaged in the remedial action effort, and to the environment posed by the implementation of the remedial action.

"(iv) The acceptability of the remedial action to the affected community.

"(v) The implementability and technical feasibility of the remedial action from an engineering perspective.

"(vi) The reasonableness of the cost.

"(2) TECHNICAL INFEASIBILITY AND UNREASONABLE COST.—

"(A) MINIMIZATION OF RISK.—If the Administrator, after reviewing the remedy selection criteria stated in paragraph (1)(C), finds that achieving the goals stated in paragraph (1)(B), is technically infeasible from an engineering perspective or unreasonably costly, the Administrator shall evaluate remedial measures that mitigate the risks to human health and the environment and select a technically practicable remedial action that will most closely achieve the goals stated in paragraph (1) through cost-effective means.

"(B) BASIS FOR FINDING.—A finding of technical impracticability may be made on the basis of a determination, supported by appropriate documentation, that, at the time at which the finding is made—

"(i) there is no known reliable means of achieving at a reasonable cost the goals stated in paragraph (1)(B); and

"(ii) it has not been shown that such a means is likely to be developed within a reasonable period of time.

"(3) PRESUMPTIVE REMEDIAL ACTIONS.—A remedial action that implements a presumptive remedial action issued under section 128 shall be considered to achieve the goals stated in paragraph (1)(B) and balance adequately the factors stated in paragraph (1)(C).

"(4) GROUND WATER.—

"(A) IN GENERAL.—A remedial action shall protect uncontaminated ground water that is suitable for use as drinking water by humans or livestock in the water's condition at the time of initiation of the facility evaluation.

"(B) CONSIDERATIONS.—A decision under subparagraph (A) regarding remedial action for ground water shall take into consideration—

"(i) the actual or planned or reasonably anticipated future use of the ground water and the timing of that use;

"(ii) any attenuation or biodegradation that would occur if no remedial action were taken; and

"(iii) the criteria stated in paragraph (1)(C).

"(C) OFFICIAL CLASSIFICATION.—For the purposes of subparagraph (A), there shall be no presumption that because ground water is suitable for use as drinking water by humans or livestock, such use is the actual or planned or reasonably anticipated future use of the ground water.

"(D) UNCONTAMINATED GROUND WATER.—A remedial action for protecting uncontaminated ground water may be based on natural attenuation or biodegradation so long as the remedial action does not interfere with the actual or planned or reasonably anticipated future use of the ground water.

"(E) CONTAMINATED GROUND WATER.—A remedial action for contaminated ground water may include point-of-use treatment.

"(5) OTHER CONSIDERATIONS APPLICABLE TO REMEDIAL ACTIONS.—A remedial action that uses institutional and engineering controls shall be considered to be on an equal basis with all other remedial action alternatives.";

(2) by redesignating subsection (c) as subsection (b), and, in the first sentence of that subsection, by striking "5 years" and inserting "7 years";

(3) by striking subsection (d); and

(4) by redesignating subsections (e) and (f) as subsections (c) and (d), respectively.

SEC. 403. REMEDY SELECTION METHODOLOGY.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

"SEC. 127. FACILITY-SPECIFIC RISK EVALUATIONS.

"(a) USES.—

"(1) IN GENERAL.—A facility-specific risk evaluation shall be used to—

"(A) identify the significant components of potential risk posed by a facility;

"(B) screen out potential contaminants, areas, or exposure pathways from further study at a facility;

"(C) compare the relative protectiveness of alternative potential remedies proposed for a facility; and

"(D) demonstrate that the remedial action selected for a facility is capable of protecting human health and the environment considering the actual or planned or reasonably anticipated future use of the land and water resources.

"(2) COMPLIANCE WITH PRINCIPLES.—A facility-specific risk evaluation shall comply with the principles stated in this section to ensure that—

"(A) actual or planned or reasonably anticipated future use of the land and water resources is given appropriate consideration; and

"(B) all of the components of the evaluation are, to the maximum extent practicable, scientifically objective and inclusive of all relevant data.

"(b) RISK EVALUATION PRINCIPLES.—A facility-specific risk evaluation shall—

"(1) be based on actual or plausible estimates of exposure considering the actual or planned or reasonably anticipated future use of the land and water resources;

"(2) be comprised of components each of which is, to the maximum extent practicable, scientifically objective, and inclusive of all relevant data;

"(3) use chemical and facility-specific data and analysis (such as toxicity, exposure, and fate and transport evaluations) in preference to default assumptions;

"(4) use a range and distribution of realistic and plausible assumptions when chemical and facility-specific data are not available;

"(5) use mathematical models that take into account the fate and transport of hazardous substances, pollutants, or contaminants, in the environment instead of relying on default assumptions; and

"(6) use credible hazard identification and dose/response assessments.

"(c) RISK COMMUNICATION PRINCIPLES.—The document reporting the results of a facility-specific risk evaluation shall—

"(1) contain an explanation that clearly communicates the risks at the facility;

"(2) identify and explain all assumptions used in the evaluation, all alternative assumptions, the policy or value judgments used in choosing the assumptions, and whether empirical data conflict with or validate the assumptions;

"(3) present—

"(A) a range and distribution of exposure and risk estimates, including, if numerical estimates are provided, central estimates of exposure and risk using—

"(i) the most plausible assumptions or a weighted combination of multiple assumptions based on different scenarios; or

"(ii) any other methodology designed to characterize the most plausible estimate of risk given the scientific information that is available at the time of the facility-specific risk evaluation; and

"(B) a statement of the nature and magnitude of the scientific and other uncertainties associated with those estimates;

"(4) state the size of the population potentially at risk from releases from the facility and the likelihood that potential exposures will occur based on the actual or planned or reasonably anticipated future use of the land and water resources; and

"(5) compare the risks from the facility to other risks commonly experienced by members of the local community in their daily lives and similar risks regulated by the Federal Government.

"(d) REGULATIONS.—Not later than 18 months after the date of enactment of this section, the Administrator shall issue a final regulation implementing this section that promotes a realistic characterization of risk that neither minimizes nor exaggerates the risks and potential risks posed by a facility or a proposed remedial action.

"SEC. 128. PRESUMPTIVE REMEDIAL ACTIONS.

"(a) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall issue a final regulation establishing presumptive remedial actions for commonly encountered types of facilities with reasonably well understood contamination problems and exposure potential.

"(b) PRACTICABILITY AND COST-EFFECTIVENESS.—Such presumptive remedies must have been demonstrated to be technically practicable and cost-effective methods of achieving the goals of protecting human health and the environment stated in section 121(a)(1)(B).

"(c) VARIATIONS.—The Administrator may issue various presumptive remedial actions based on various uses of land and water resources, various environmental media, and various types of hazardous substances, pollutants, or contaminants.

"(d) ENGINEERING CONTROLS.—Presumptive remedial actions are not limited to treatment remedies, but may be based on, or include, institutional and standard engineering controls.".

SEC. 404. REMEDY SELECTION PROCEDURES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 403, is amended by adding at the end the following:

"SEC. 129. REMEDIAL ACTION PLANNING AND IMPLEMENTATION.

"(a) IN GENERAL.—

"(1) BASIC RULES.—

"(A) PROCEDURES.—A remedial action with respect to a facility that is listed or proposed for listing on the National Priorities List shall be developed and selected in accordance with the procedures set forth in this section.

"(B) NO OTHER PROCEDURES OR REQUIREMENTS.—The procedures stated in this section are in lieu of any procedures or requirements under any other law to conduct remedial investigations, feasibility studies, record of decisions, remedial designs, or remedial actions.

"(C) LIMITED REVIEW.—In a case in which the potentially responsible parties prepare a remedial action plan, only the work plan, facility evaluation, proposed remedial action plan, and final remedial design shall be subject to review, comment, and approval by the Administrator.

"(D) DESIGNATION OF POTENTIALLY RESPONSIBLE PARTIES TO PREPARE WORK PLAN, FACILITY EVALUATION, PROPOSED REMEDIAL ACTION, AND REMEDIAL DESIGN AND TO IMPLEMENT THE REMEDIAL ACTION PLAN.—In the case of a facility for which the Administrator is not required to prepare a work plan, facility evaluation, proposed remedial action, and remedial design and implement the remedial action plan—

"(i) if a potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible party or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator shall designate the potentially responsible party or group of potentially responsible parties to perform those functions; and

"(ii) if more than 1 potentially responsible party or group of potentially responsible parties—

"(I) expresses an intention to prepare a work plan, facility evaluation, proposed remedial action plan, and remedial design and to implement the remedial action plan (not including any such expression of intention that the Administrator finds is not made in good faith); and

"(II) demonstrates that the potentially responsible parties or group of potentially responsible parties has the financial resources and the expertise to perform those functions, the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

"(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

"(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

"(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

"(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies, the Administrator (if the Administrator is conducting the remedial action) or the preparer of the remedial action plan may, after conducting a facility evaluation, propose a presumptive remedial action for the facility, if the Administrator or preparer shows with appropriate documentation that the facility fits the generic classification for which a presumptive remedial action has been issued and performs an engineering evaluation to demonstrate that the presumptive remedial action can be applied at the facility.

"(B) LIMITATION.—The Administrator may not require a potentially responsible party to implement a presumptive remedial action.

"(b) REMEDIAL ACTION PLANNING PROCESS.—

"(1) IN GENERAL.—The Administrator or a potentially responsible party shall prepare and implement a remedial action plan for a facility.

"(2) CONTENTS.—A remedial action plan shall consist of—

"(A) the results of a facility evaluation, including any screening analysis performed at the facility;

"(B) a discussion of the potentially viable remedies that are considered to be reasonable under section 121(a) and how they balance the factors stated in section 121(a)(1)(C);

"(C) a description of the remedial action to be taken;

"(D) a description of the facility-specific risk-based evaluation under section 127 and a demonstration that the selected remedial action will satisfy sections 121(a) and 128; and

"(E) a realistic schedule for conducting the remedial action, taking into consideration facility-specific factors.

"(3) WORK PLAN.—

"(A) IN GENERAL.—Prior to preparation of a remedial action plan, the preparer shall develop a work plan, including a community information and participation plan, which generally describes how the remedial action plan will be developed.

"(B) SUBMISSION.—A work plan shall be submitted to the Administrator, the State, the community response organization, the local library, and any other public facility designated by the Administrator.

"(C) PUBLICATION.—The Administrator or other person that prepares a work plan shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the work plan is available for review at the local library and that comments concerning the work plan can be submitted to the preparer of the work plan, the Administrator, the State, or the local community response organization.

"(D) FORWARDING OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall forward the comments to the preparer of the work plan.

"(E) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a work plan, the Administrator shall—

"(i) identify to the preparer of the work plan, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised work plan within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(4) FACILITY EVALUATION.—

"(A) IN GENERAL.—The Administrator (or the preparer of the facility evaluation) shall conduct a facility evaluation at each facility to characterize the risk posed by the facility by gathering enough information necessary to—

"(i) assess potential remedial alternatives, including ascertaining, to the degree appropriate, the volume and nature of the contaminants, their location, potential exposure pathways and receptors;

"(ii) discern the actual or planned or reasonably anticipated future use of the land and water resources; and

"(iii) screen out any uncontaminated areas, contaminants, and potential pathways from further consideration.

"(B) SUBMISSION.—A draft facility evaluation shall be submitted to the Administrator for approval.

"(C) PUBLICATION.—Not later than 30 days after submission, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the draft facility evaluation, the Administrator shall publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice announcing that the draft facility evaluation is available for review and that comments concerning the evaluation can be submitted to the Administrator, the State, and the community response organization.

"(D) AVAILABILITY OF COMMENTS.—If comments are submitted to the Administrator, the State, or the community response organization, the Administrator, State, or community response organization shall make the comments available to the preparer of the facility evaluation.

"(E) NOTICE OF APPROVAL.—If the Administrator approves a facility evaluation, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(F) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a facility evaluation, the Administrator shall—

"(i) identify to the preparer of the facility evaluation, with specificity, any deficiencies in the submission; and

"(ii) require that the preparer submit a revised facility evaluation within a reasonable period of time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(5) PROPOSED REMEDIAL ACTION PLAN.—

"(A) SUBMISSION.—In a case in which a potentially responsible party prepares a remedial action plan, the preparer shall submit the remedial action plan to the Administrator for approval and provide a copy to the local library.

"(B) PUBLICATION.—After receipt of the proposed remedial action plan, or in a case in which the Administrator is preparing the remedial action plan, after the completion of the remedial action plan, the Administrator shall cause to be published in a newspaper of general circulation in the area where the facility is located and posted in other conspicuous places in the local community a notice announcing that the proposed remedial action plan is available for review at the local library and that comments concerning the remedial action plan can be submitted to the Administrator, the State, and the community response organization.

"(C) AVAILABILITY OF COMMENTS.—If comments are submitted to a State or the community response organization, the State or community response organization shall make the comments available to the preparer of the proposed remedial action plan.

"(D) HEARING.—The Administrator shall hold a public hearing at which the proposed remedial action plan shall be presented and public comment received.

"(E) APPROVAL.—

"(i) IN GENERAL.—The Administrator shall approve a proposed remedial action plan if the plan—

"(I) contains the information described in section 127(b); and

"(II) satisfies section 121(a).

"(ii) DEFAULT.—If the Administrator fails to issue a notice of disapproval of a proposed remedial action plan in accordance with subparagraph (G) within 90 days after the proposed plan is submitted, the plan shall be considered to be approved and its implementation fully authorized.

"(F) NOTICE OF APPROVAL.—If the Administrator approves a proposed remedial action plan, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(G) NOTICE OF DISAPPROVAL.—If the Administrator does not approve a proposed remedial action plan, the Administrator shall—

"(i) inform the preparer of the proposed remedial action plan, with specificity, of any deficiencies in the submission; and

"(ii) request that the preparer submit a revised proposed remedial action plan within a reasonable time, which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator.

"(6) IMPLEMENTATION OF REMEDIAL ACTION PLAN.—A remedial action plan that has been approved or is considered to be approved under paragraph (5) shall be implemented in accordance with the schedule set forth in the remedial action plan.

"(7) REMEDIAL DESIGN.—

"(A) SUBMISSION.—A remedial design shall be submitted to the Administrator, or in a case in which the Administrator is preparing the remedial action plan, shall be completed by the Administrator.

"(B) PUBLICATION.—After receipt by the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall—

"(i) notify the community response organization; and

"(ii) cause a notice of submission or completion of the remedial design to be published in a newspaper of general circulation and posted in conspicuous places in the area where the facility is located.

"(C) COMMENT.—The Administrator shall provide an opportunity to the public to submit written comments on the remedial design.

"(D) APPROVAL.—Not later than 90 days after the submission to the Administrator of (or completion by the Administrator of) the remedial design, the Administrator shall approve or disapprove the remedial design.

"(E) NOTICE OF APPROVAL.—If the Administrator approves a remedial design, the Administrator shall—

"(i) notify the community response organization; and

"(ii) publish in a newspaper of general circulation in the area where the facility is located, and post in conspicuous places in the local community, a notice of approval.

"(F) NOTICE OF DISAPPROVAL.—If the Administrator disapproves the remedial design, the Administrator shall—

"(i) identify with specificity any deficiencies in the submission; and

"(ii) allow the preparer submitting a remedial design a reasonable time (which shall not exceed 90 days except in unusual circumstances, as determined by the Administrator) in which to submit a revised remedial design.

"(c) JUDICIAL REVIEW.—

"(1) FINAL ACTION.—Notwithstanding any other provision of this Act or any other law, an approval or disapproval of a remedial action plan described in paragraph (2), shall be final action of the Administrator subject to judicial review in United States district court.

"(2) APPLICATION AND SUBSECTION.—A remedial action plan is described in this paragraph if—

"(A) the plan is approved or disapproved after the date of enactment of this section; and

"(B) the capital cost of the remedial action under the plan is projected to cost more than $15,000,000 for any operating unit that is the subject of a separately enforceable remedial action plan or more than $27,000,000 for an entire facility.

"(d) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

"(1) NOTICE OF SIGNIFICANT DEVIATION.—If the Administrator determines that the implementation of the remedial action plan has deviated significantly from the plan, the Administrator shall provide the implementing party a notice that requires the implementing party, within a reasonable period of time specified by the Administrator, to—

"(A) comply with the terms of the remedial action plan; or

"(B) submit a notice for modifying the plan.

"(2) FAILURE TO COMPLY.—

"(A) CLASS ONE ADMINISTRATIVE PENALTY.—In issuing a notice under paragraph (1), the Administrator may impose a class one administrative penalty consistent with section 109(a).

"(B) ADDITIONAL ENFORCEMENT MEASURES.—If the implementing party fails to either comply with the plan or submit a proposed modification, the Administrator may pursue all additional appropriate enforcement measures pursuant to this Act.

"(e) MODIFICATIONS TO REMEDIAL ACTION.—

"(1) DEFINITION.—In this subsection, the term 'major modification' means a modification that—

"(A) fundamentally alters the interpretation of site conditions at the facility;

"(B) fundamentally alters the interpretation of sources of risk at the facility;

"(C) fundamentally alters the scope of protection to be achieved by the selected remedial action;

"(D) fundamentally alters the performance of the selected remedial action; or

"(E) delays the completion of the remedy by more than 180 days.

"(2) MAJOR MODIFICATIONS.—

"(A) IN GENERAL.—If the Administrator or other implementing party proposes a major modification to the plan, the Administrator or other implementing party shall demonstrate that—

"(i) the major modification constitutes the most cost-effective remedial alternative that is technologically feasible and is not unreasonably costly; and

"(ii) that the revised remedy will continue to satisfy section 121(a).

"(B) NOTICE AND COMMENT.—The Administrator shall provide the implementing party, the community response organization, and the local community notice of the proposed major modification and at least 30 days' opportunity to comment on any such proposed modification.

"(C) PROMPT ACTION.—At the end of the comment period, the Administrator shall promptly approve or disapprove the proposed modification and order implementation of the modification in accordance with any reasonable and relevant requirements that the Administrator may specify.

"(3) MINOR MODIFICATIONS.—Nothing in this section modifies the discretionary authority of the Administrator to make a minor modification of a record of decision or remedial action plan to conform to the best science and engineering, the requirements of this Act, or changing conditions at a facility.".

SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 404, is amended by adding at the end the following:

"SEC. 130. COMPLETION OF PHYSICAL CONSTRUCTION AND DELISTING.

"(a) IN GENERAL.—

"(1) PROPOSED NOTICE OF COMPLETION AND PROPOSED DELISTING.—Not later than 60 days after the completion by the Administrator of physical construction necessary to implement a response action at a facility, or not later than 60 days after receipt of a notice of such completion from the implementing party, the Administrator shall publish a notice of completion and proposed delisting of the facility from the National Priorities List in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

"(2) PHYSICAL CONSTRUCTION.—For the purposes of paragraph (1), physical construction necessary to implement a response action at a facility shall be considered to be complete when—

"(A) construction of all systems, structures, devices, and other components necessary to implement a response action for the entire facility has been completed in accordance with the remedial design plan; or

"(B) no construction, or no further construction, is expected to be undertaken.

"(3) COMMENTS.—The public shall be provided 30 days in which to submit comments on the notice of completion and proposed delisting.

"(4) FINAL NOTICE.—Not later than 60 days after the end of the comment period, the Administrator shall—

"(A) issue a final notice of completion and delisting or a notice of withdrawal of the proposed notice until the implementation of the remedial action is determined to be complete; and

"(B) publish the notice in the Federal Register and in a newspaper of general circulation in the area where the facility is located.

"(5) FAILURE TO ACT.—If the Administrator fails to publish a notice of withdrawal within the 60-day period described in paragraph (4)—

"(A) the remedial action plan shall be deemed to have been completed; and

"(B) the facility shall be delisted by operation of law.

"(6) EFFECT OF DELISTING.—The delisting of a facility shall have no effect on—

"(A) liability allocation requirements or cost-recovery provisions otherwise provided in this Act;

"(B) any liability of a potentially responsible party or the obligation of any person to provide continued operation and maintenance;

"(C) the authority of the Administrator to make expenditures from the Fund relating to the facility; or

"(D) the enforceability of any consent order or decree relating to the facility.

"(7) FAILURE TO MAKE TIMELY DISAPPROVAL.—The issuance of a final notice of completion and delisting or of a notice of withdrawal within the time required by subsection (a)(3) constitutes a nondiscretionary duty within the meaning of section 310(a)(2).

"(b) CERTIFICATION.—A final notice of completion and delisting shall include a certification by the Administrator that the facility has met all of the requirements of the remedial action plan (except requirements for continued operation and maintenance).

"(c) FUTURE USE OF A FACILITY.—

"(1) FACILITY AVAILABLE FOR UNRESTRICTED USE.—If, after completion of physical construction, a facility is available for unrestricted use and there is no need for continued operation and maintenance, the potentially responsible parties shall have no further liability under any Federal, State, or local law (including any regulation) for remediation at the facility, unless the Administrator determines, based on new and reliable factual information about the facility, that the facility does not satisfy section 121(a).

"(2) FACILITY NOT AVAILABLE FOR ANY USE.—If, after completion of physical construction, a facility is not available for any use or there are continued operation and maintenance requirements that preclude use of the facility, the Administrator shall—

"(A) review the status of the facility every 7 years; and

"(B) require additional remedial action at the facility if the Administrator determines, after notice and opportunity for hearing, that the facility does not satisfy section 121(a).

"(3) FACILITIES AVAILABLE FOR RESTRICTED USE.—The Administrator may determine

that a facility or portion of a facility is available for restricted use while a response action is under way or after physical construction has been completed. The Administrator shall make a determination that uncontaminated portions of the facility are available for unrestricted use when such use would not interfere with ongoing operations and maintenance activities or endanger human health or the environment.

"(d) OPERATION AND MAINTENANCE.—The need to perform continued operation and maintenance at a facility shall not delay delisting of the facility or issuance of the certification if performance of operation and maintenance is subject to a legally enforceable agreement, order, or decree.

"(e) CHANGE OF USE OF FACILITY.—

"(1) PETITION.—Any person may petition the Administrator to change the use of a facility described in subsection (c) (2) or (3) from that which was the basis of the remedial action plan.

"(2) GRANT.—The Administrator may grant a petition under paragraph (1) if the petitioner agrees to implement any additional remedial actions that the Administrator determines are necessary to continue to satisfy section 121(a), considering the different use of the facility.

"(3) RESPONSIBILITY FOR RISK.—When a petition has been granted under paragraph (2), the person requesting the change in use of the facility shall be responsible for all risk associated with altering the facility and all costs of implementing any necessary additional remedial actions.".

SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY INVOLVED IN REMEDY SELECTION.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 405, is amended by adding at the end the following:

"SEC. 131. TRANSITION RULES FOR FACILITIES INVOLVED IN REMEDY SELECTION ON DATE OF ENACTMENT.

"(a) NO RECORD OF DECISION.—

"(1) OPTION.—In the case of a facility or operable unit that, as of the date of enactment of this section, is the subject of a remedial investigation and feasibility study (whether completed or incomplete), the potentially responsible parties or the Administrator may elect to follow the remedial action plan process stated in section 129 rather than the remedial investigation and feasibility study and record of decision process under regulations in effect on the date of enactment of this section that would otherwise apply if the requesting party notifies the Administrator and other potentially responsible parties of the election not later than 90 days after the date of enactment of this section.

"(2) SUBMISSION OF FACILITY EVALUATION.—In a case in which the potentially responsible parties have or the Administrator has made an election under subsection (a), the potentially responsible parties shall submit the proposed facility evaluation within 180 days after the date on which notice of the election is given.

"(b) REMEDY REVIEW BOARDS.—

"(1) ESTABLISHMENT.—Not later than 60 days after the date of enactment of this section, the Administrator shall establish 1 or more remedy review boards (referred to in this subsection as a 'remedy review board'), each consisting of at least 3 independent technical experts, to review petitions under paragraphs (3) and (4).

"(2) GENERAL PROCEDURE.—

"(A) COMPLETION OF REVIEW.—The review of a petition submitted to a remedy review board shall be completed not later than 180 days after the receipt of the petition unless the Administrator, for good cause, grants additional time.

"(B) COSTS.—All costs of review by a remedy review board shall be borne by the petitioner.

"(C) DECISIONS.—At the completion of the 180-day review period, a remedy review board shall issue a written decision including responses to all comments submitted during the review process with regard to a petition.

"(D) OPPORTUNITY FOR COMMENT AND MEETINGS.—In reviewing a petition, a remedy review board shall provide an opportunity for all interested parties, including representatives of the State and local community in which the facility is located, to comment on the petition and, if requested, to meet with the remedy review board.

"(E) REVIEW BY THE ADMINISTRATOR.—

"(i) IN GENERAL.—The Administrator shall have final review of any decision of a remedy review board.

"(ii) STANDARD OF REVIEW.—In conducting a review of a decision of a remedy review board, the Administrator shall accord substantial weight to the remedy review board's decision.

"(iii) REJECTION OF DECISION.—Any determination to reject a remedy review board's decision must be approved by the Administrator or the Assistant Administrator for Solid Waste and Emergency Response.

"(F) DECISION OF THE BOARD.—A decision of a remedy review board decision under subparagraph (B) and the Administrator's review of a decision under subparagraph (E) shall be subject to judicial review under section 113(h).

"(3) CONSTRUCTION NOT BEGUN.—

"(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed but construction has not yet begun prior to the date of enactment of this section, the implementor of the record of decision may file a petition with a remedy review board not later than 90 days after the date of enactment of this section to determine whether an alternate remedy under section 127 should apply to the facility or operable unit.

"(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

"(i) the alternative remedial action proposed in the petition satisfies section 121(a);

"(ii) the alternative remedial action achieves a cost savings of at least $1,500,000.

"(iii) implementation of the alternative remedial action will not result in a substantial delay in the implementation of a remedial action.

"(C) REVIEW OF COMMENTS.—A remedy review board may reject or modify a petition under subparagraph (A), even though the petition meets the criteria stated in subparagraph (B), based on a review of comments submitted by persons other than the petitioner.

"(D) CONTENTS OF PETITION.—A petition described in subparagraph (A) shall rely on risk assessment data that were available prior to issuance of the record of decision but shall consider the actual or planned or reasonably anticipated future use of the land and water resources.

"(E) INCORRECT DATA.—Notwithstanding subparagraph (B) and (D), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

"(4) ADDITIONAL CONSTRUCTION.—

"(A) PETITION.—In the case of a facility or operable unit with respect to which a record of decision has been signed and construction has begun prior to the date of enactment of this section, but for which additional construction or long-term operation and maintenance activities are anticipated, the implementor of the record of decision may file a petition with a remedy review board within 90 days after the date of enactment of this section to determine whether an alternative remedial action should apply to the facility or operable unit.

"(B) CRITERIA FOR APPROVAL.—Subject to subparagraph (C), a remedy review board shall approve a petition described in subparagraph (A) if—

"(i) the alternative remedial action proposed in the petition is protective of human health and the environment in accordance with the standards of section 121, as in effect prior to the date of enactment of this section;

"(ii) implementation of the alternative remedial action will not result in a substantial delay in the implementation of a remedial action; and

"(iii)(I) the petitioner demonstrates that the selected remedial action is inconsistent with the most recent version of any guidance issued by the Administrator prior to the date of enactment of this section concerning the selection or implementation of any remedial action; or

"(II) the alternative remedial action employs a phased remedial approach which, if successful would preclude the need for full implementation of the selected remedial action.

"(C) REVIEW OF COMMENTS.—A remedy review board may reject or modify a petition under subparagraph (A), even though the petition meets the criteria stated in subparagraph (B), based on a review of comments submitted by persons other than the petitioner.

"(D) INCORRECT DATA.—Notwithstanding subparagraph (B), a remedy review board may approve a petition if the petitioner demonstrates that technical data generated subsequent to the issuance of the record of decision indicates that the decision was based on faulty or incorrect information.

"(5) DELAY.—In determining whether an alternative remedial action will substantially delay the implementation of a remedial action of a facility, no consideration shall be given to the time necessary to review a petition under paragraph (3) or (4) by a remedy review board or the Administrator.".

SEC. 407. JUDICIAL REVIEW.

(a) REVIEW OF CERTAIN ACTIONS.—Section 113(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(h)) is amended by adding at the end the following:

"(6) An action under section 129(c).".

(b) STAY.—Section 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(b)) is amended by adding at the end the following: "In the case of a challenge under section 113(h)(6), the court may stay the implementation or initiation of the challenged actions pending judicial resolution of the matter.".

SEC. 408. NATIONAL PRIORITIES LIST.

(a) REVISION OF NATIONAL CONTINGENCY PLAN.—

(1) AMENDMENTS.—Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended—

(A) in subsection (a)(8) by adding at the end the following:

"(C) provision that in listing a facility on the National Priorities List, the Administrator shall not include any parcel of real property at which no release has actually occurred, but to which a released hazardous substance, pollutant, or contaminant has migrated in ground water that has moved through subsurface strata from another parcel of real estate at which the release actually occurred, unless—

"(i) the ground water is in use as a public drinking water supply or was in such use at the time of the release; and

"(ii) the owner or operator of the facility is liable, or is affiliated with any other person that is liable, for any response costs at the facility, through any direct or indirect familial relationship, or any contractual, corporate, or financial relationship other than that created by the instruments by which title to the facility is conveyed or financed."; and

(B) by adding at the end the following:

"(h) LISTING OF PARTICULAR PARCELS.—

"(1) DEFINITION.—In subsection (a)(8)(C) and paragraph (2) of this subsection, the term 'parcel of real property' means a parcel, lot, or tract of land that has a separate legal description from that of any other parcel, lot, or tract of land the legal description and ownership of which has been recorded in accordance with the law of the State in which it is located.

"(2) STATUTORY CONSTRUCTION.—Nothing in subsection (a)(8)(C) shall be construed to limit the Administrator's authority under section 104 to obtain access to and undertake response actions at any parcel of real property to which a released hazardous substance, pollutant, or contaminant has migrated in the ground water.".

(2) REVISION OF NATIONAL PRIORITIES LIST.—The President shall revise the National Priorities List to conform with the amendment made by paragraph (1) not later that 180 days of the date of enactment of this Act.

TITLE V—LIABILITY

SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.

(a) IN GENERAL.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 306(b), is amended by adding at the end the following:

"(r) 10-PERCENT LIMITATION FOR MUNICIPAL SOLID WASTE AND SEWAGE SLUDGE.—No person or group of persons (other than the United States or a department, agency, or instrumentality of the United States) shall be liable for more than 10 percent of total response costs at a facility listed on the National Priorities List, in the aggregate, incurred after the date of enactment of this subsection if—

"(1) the person is liable solely under subparagraph (C) or (D) of subsection (a)(1); and

"(2) the arrangement for disposal, treatment, or transport for disposal or treatment, or the acceptance for transport for disposal or treatment, involved only municipal solid waste or sewage sludge.

"(s) DE MINIMIS CONTRIBUTOR EXEMPTION.—In the case of a vessel or facility that is not owned by the United States and is listed on the National Priorities List, no person described in subparagraph (C) or (D) of subsection (a)(1) (other than the United States or any department, agency, or instrumentality of the United States) shall be liable to the United States or to any other person (including liability for contribution) under Federal or State law for any costs under this section incurred after the date of enactment of this subsection, if no activity specifically attributable to the person resulted in—

"(1) the disposal or treatment of more than 1 percent of the volume of material containing a hazardous substance at the vessel or facility prior to December 11, 1980; or

"(2) the disposal or treatment of not more than 200 pounds or 110 gallons of material containing hazardous substances at the vessel or facility prior to January 1, 1996, or such greater or lesser amount as the Administrator may determine by regulation.

"(t) SUCCESSOR LIABILITY.—The liability of a person that has purchased assets from another person that is otherwise liable under this section shall be determined in accordance with the law of the State in which the vessel or facility is located.".

(b) CONFORMING AMENDMENT.—Section 107(a) is amended by striking "of this section" and inserting ", the limitation stated in subsection (r), and the exemption stated in subsection (s)".

(c) EFFECTIVE DATE AND TRANSITION RULES.—The amendments made by this section—

(1) shall take effect with respect to an action under section 106, 107, or 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606, 9607, and 9613) that becomes final on or after the date of enactment of this Act; but

(2) shall not apply to an action brought by any person under section 107 or 113 of that Act (42 U.S.C. 9607 and 9613) for costs or damages incurred by the person before the date of enactment of this Act.

SEC. 502. CONTRIBUTION FROM THE FUND FOR CERTAIN RETROACTIVE LIABILITY.

Section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9612) is amended by adding at the end the following:

"(g) CONTRIBUTION FROM THE FUND FOR CERTAIN RETROACTIVE LIABILITY.—

"(1) COMPLETION OF OBLIGATIONS.—A person that is subject to an administrative order issued under section 106 or has entered into a settlement decree with the United States or a State as of the date of enactment of this subsection shall complete the person's obligations under the order or settlement decree.

"(2) CONTRIBUTION.—A person described in paragraph (1) shall receive contribution from the Fund for any portion of the costs incurred for the performance of the response action after the date of enactment of this subsection—

"(A) if the person is not liable for such costs by reason of the de minimis contributor exemption under section 107(s); or

"(B) if and to the extent the person's allocated share, as determined under section 503, is funded by the orphan share under section 503(1)(2)(B).

"(3) APPLICATION FOR CONTRIBUTION.—

"(A) IN GENERAL.—Contribution under this section shall be made upon receipt by the Administrator of an application from the person requesting contribution.

"(B) PERIODIC APPLICATIONS.—Application may be made no more frequently than every 6 months after such payments are made or such costs are incurred, commencing 6 months after the enactment of this subsection.

"(4) REGULATIONS.—Contribution shall be made in accordance with such regulations as the Administrator shall issue within 180 days after the date of enactment of this section.

"(5) DOCUMENTATION.—The regulations under paragraph (4) shall, at a minimum, require that an application for contribution contain such documentation of costs and expenditures as the Administrator considers necessary to ensure compliance with this subsection.

"(6) EXPEDITION.—The Administrator shall develop and implement such procedures as may be necessary to provide contribution to such persons in an expeditious manner, but in no case shall a contribution be made later than 1 year after submission of an application under this subsection.

"(7) CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.—No contribution shall be made under this subsection unless the Administrator determines that such costs are consistent with the National Contingency Plan.".

SEC. 503. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), as amended by section 406, is amended by adding at the end the following:

"SEC. 132. ALLOCATION OF LIABILITY FOR CERTAIN FACILITIES.

"(a) DEFINITIONS.—In this section:

"(1) ALLOCATED SHARE.—The term 'allocated share' means the percentage of liability assigned to a potentially responsible party by the allocator in an allocation report under section 132(j)(6).

"(2) ALLOCATION PARTY.—The term 'allocation party' means a party, named on a list of parties that will be subject to the allocation process under this section, issued by an allocator under subsection (g)(3)(A).

"(3) ALLOCATOR.—The term 'allocator' means an allocator retained to conduct an allocation for a facility under subsection (f)(1).

"(4) MANDATORY ALLOCATION FACILITY.—The term 'mandatory allocation facility' means—

"(A) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and at which one or more potentially responsible parties are liable or potentially liable for status or conduct after December 11, 1980;

"(B) a non-federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which no person is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980;

"(C) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other that a department, agency, or instrumentality of the United States) are liable or potentially liable for status or conduct after December 11, 1980; and

"(D) a federally owned vessel or facility listed on the National Priorities List with respect to which response costs are incurred after the date of enactment of this section, and with respect to which one or more of the potentially responsible parties is not a department, agency, or instrumentality of the United States and with respect to which no

person is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980.

"(5) ORPHAN SHARE.—The term 'orphan share' means the total of the allocated shares determined by the allocator under section 132(1).

"(b) ALLOCATIONS OF LIABILITY.—

"(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties (including 1 or more potentially responsible parties that are qualified for de minimis contributor exemption under section 107(s)), the Administrator shall conduct the allocation process under this section.

"(2) REQUESTED ALLOCATIONS.—For a facility (other than a mandatory allocation facility) involving 2 or more potentially responsible parties, the Administrator shall conduct the allocation process under this section if the allocation is requested in writing by a potentially responsible party that has—

"(A) incurred response costs with respect to a response action; or

"(B) resolved any liability to the United States with respect to a response action in order to assist in allocating shares among potentially responsible parties.

"(3) PERMISSIVE ALLOCATIONS.—For any facility (other than a mandatory allocation facility or a facility with respect to which a request is made under paragraph (2)) involving 2 or more potentially responsible parties, the Administrator may conduct the allocation process under this section if the Administrator considers it to be appropriate to do so.

"(4) ORPHAN SHARE.—An allocation performed at a vessel or facility identified under subsection (b) (2) or (3) shall not require payment of an orphan share under subsection (l) or reimbursement under subsection (t).

"(5) EXCLUDED FACILITIES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of the allocation process only, this section does not apply to a response action at a mandatory allocation facility for which there was in effect as of the date of enactment of this section, a settlement, decree, or order that determines the liability and allocated shares of all potentially responsible parties with respect to the response action.

"(B) AVAILABILITY OF ORPHAN SHARE.—For any mandatory allocation facility that is otherwise excluded by subparagraph (A) and for which there was not in effect as of the date of enactment of this section a final judicial order that determined the liability of all parties to the action for response costs incurred after the date of enactment of this section, an allocation shall be conducted for the sole purpose of determining the availability of orphan share funding pursuant to subsection (l)(2) for any response costs incurred after the date of enactment of this section.

"(6) SCOPE OF ALLOCATIONS.—An allocation under this section shall apply to—

"(A) response costs incurred after the date of enactment of this section, with respect to a mandatory allocation facility described in subsection (a)(3) (A), (B), (C), or (D); and

"(B) response costs incurred at a facility that is the subject of a requested or permissive allocation under subsection (b) (2) or (3).

"(7) ORPHAN SHARE FACILITY.—Any non-federally owned vessel or facility that is listed on the National Priorities List at which at least 1 person is liable or potentially liable under section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980, and at which no person is liable or potentially liable for status or conduct after December 11, 1980, shall be considered to be an orphan share facility, and all response costs incurred at the vessel or facility after the date of enactment of this section shall be paid by the orphan share.

"(8) OTHER MATTERS.—This section shall not limit or affect—

"(A) the obligation of the Administrator to conduct the allocation process for a response action at a facility that has been the subject of a partial or expedited settlement with respect to a response action that is not within the scope of the allocation;

"(B) the ability of any person to resolve any liability at a facility to any other person at any time before initiation or completion of the allocation process, subject to subsection (l)(3);

"(C) the validity, enforceability, finality, or merits of any judicial or administrative order, judgment, or decree, issued prior to the date of enactment of this section with respect to liability under this Act; or

"(D) the validity, enforceability, finality, or merits of any preexisting contract or agreement relating to any allocation of responsibility or any indemnity for, or sharing of, any response costs under this Act.

"(c) MORATORIUM ON LITIGATION AND ENFORCEMENT.—

"(1) IN GENERAL.—No person may assert a claim for recovery of a response cost or contribution toward a response cost (including a claim for insurance proceeds) under this Act or any other Federal or State law in connection with a response action—

"(A) for which an allocation is required to be performed under subsection (b)(1); or

"(B) for which the Administrator has initiated the allocation process under this section,

until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(6) or, if a second or subsequent report is issued under subsection (q), the date of issuance of the second or subsequent report.

"(2) PENDING ACTIONS OR CLAIMS.—If a claim described in paragraph (1) is pending on the date of enactment of this section or on initiation of an allocation under this section, the portion of the claim pertaining to response costs that are the subject of the allocation shall be stayed until the date that is 120 days after the date of issuance of a report by the allocator under subsection (j)(6) or, if a second or subsequent report is issued under subsection (q), the date of issuance of the second or subsequent report, unless the court determines that a stay would result in manifest injustice.

"(3) TOLLING OF PERIOD OF LIMITATION.—

"(A) BEGINNING OF TOLLING.—Any applicable period of limitation with respect to a claim subject to paragraph (1) shall be tolled beginning on the earlier of—

"(i) the date of listing of the facility on the National Priorities List if the listing occurs after the date of enactment of this section; or

"(ii) the date of initiation of the allocation process under this section.

"(B) END OF TOLLING.—A period of limitation shall be tolled under subparagraph (A) until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(6), or of a second or subsequent report under subsection (q).

"(4) LATER ACTIONS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), until the date that is 180 days after the date of issuance of a report by the allocator under subsection (j)(6) or of a second or subsequent report under subsection (q), the Administrator shall not issue an order under section 106 after the date of enactment of this section in connection with a response action for which an allocation is required to be performed under subsection (b)(1) to any party that, based on the initial list of parties compiled pursuant to subsection (d)(5) appears to be entitled to full orphan share funding under section (l)(2)(B).

"(B) EMERGENCIES.—Subparagraph (A) does not preclude an order requiring the performance of a removal action that is necessary to address an emergency at a facility.

"(C) SUBSEQUENT ALLOCATION REPORT.—If, after the date of enactment of this section, the Administrator issues an order under section 106 to a party that the allocator subsequently determines is entitled to full funding for the party's allocated share pursuant to section (l)(2)(B)—

"(i) all response costs incurred by the party after the date of enactment of this section shall be reimbursed; and

"(ii) the party's obligations under the order shall cease 90 days after the issuance of the allocator's report under subsection (j)(6) or a second report under subsection (q).

"(5) RETAINED AUTHORITY.—Except as specifically provided in this section, this section does not affect the authority of the Administrator to—

"(A) exercise the powers conferred by section 103, 104, 105, 106, or 122;

"(B) commence an action against a party if there is a contemporaneous filing of a judicial consent decree resolving the liability of the party;

"(C) file a proof of claim or take other action in a proceeding under title 11, United States Code; or

"(D) require implementation of a response action at an allocation facility during the conduct of the allocation process.

"(d) INITIATION OF ALLOCATION PROCESS.—

"(1) RESPONSIBLE PARTY SEARCH.—For each facility described in paragraph (2), the Administrator shall initiate the allocation process as soon as practicable by commencing a comprehensive search for all potentially responsible parties with respect to the facility under authority of section 104.

"(2) FACILITIES.—The Administrator shall initiate the allocation process for each—

"(A) mandatory allocation facility;

"(B) facility for which a request for allocation is made under subsection (b)(2); and

"(C) facility that the Administrator considers to be appropriate for allocation under subsection (b)(3).

"(3) TIME LIMIT.—The Administrator shall initiate the allocation process for a facility not later than the earlier of—

"(A) the date of completion of the facility evaluation or remedial investigation for the facility; or

"(B) the date that is 60 days after the date of selection of a removal action.

"(4) SUBMISSION OF INFORMATION AT ALLOCATION FACILITIES.—Any person may submit information to the Administrator concerning a potentially responsible party for a facility that is subject to a search, and the Administrator shall consider the information in carrying out the search.

"(5) INITIAL LIST OF PARTIES.—

"(A) IN GENERAL.—As soon as practicable after initiation of an allocation process for a facility, the Administrator shall publish, in accordance with section 117(d), a list of all potentially responsible parties identified for a facility.

"(B) TIME LIMIT.—The Administrator shall publish a list under paragraph (1) not later

than 120 days after the commencement of a comprehensive search.

"(C) COPY OF LIST.—The Administrator shall provide each person named on a list of potentially responsible parties with—

"(i) a copy of the list; and

"(ii) the names of not less than 25 neutral parties—

"(I) who are not employees of the United States;

"(II) who are qualified to perform an allocation at the facility, as determined by the Administrator; and

"(III) at least some of whom maintain an office in the vicinity of the facility.

"(D) PROPOSED ALLOCATOR.—A person identified by the Administrator as a potentially responsible party may propose an allocator not on the list of neutral parties.

"(e) SELECTION OF ALLOCATOR.—

"(1) IN GENERAL.—As soon as practicable after the receipt of a list under subsection (d)(5)(C), the potentially responsible parties named on the list shall—

"(A) select an individual to serve as allocator by plurality vote on a per capita basis; and

"(B) promptly notify the Administrator of the selection.

"(2) VOTE BY REPRESENTATIVE.—The representative of the Fund shall be entitled to cast 1 vote in an election under paragraph (1).

"(3) ELIGIBLE ALLOCATORS.—The potentially responsible parties shall select an allocator under paragraph (1) from among individuals—

"(A) named on the list of neutral parties provided by the Administrator;

"(B) named on a list that is current on the date of selection of neutrals maintained by the American Arbitration Association, the Center for Public Resources, or another nonprofit or governmental organization of comparable standing; or

"(C) proposed by a party under subsection (d)(5)(D).

"(4) UNQUALIFIED ALLOCATOR.—

"(A) IN GENERAL.—If the Administrator determines that a person selected under paragraph (1) is unqualified to serve, the Administrator shall promptly notify all potentially responsible parties for the facility, and the potentially responsible parties shall make an alternative selection under paragraph (1).

"(B) LIMIT ON DETERMINATIONS.—The Administrator may not make more than 2 determinations that an allocator is unqualified under this paragraph with respect to any facility.

"(5) DETERMINATION BY ADMINISTRATOR.—If the Administrator does not receive notice of selection of an allocator within 60 days after a copy of a list is provided under subsection (d)(5)(C), or if the Administrator, having given a notification under paragraph (4), does not receive notice of an alternative selection of an allocator under that paragraph within 60 days after the date of the notification, the Administrator shall promptly select and designate a person to serve as allocator.

"(6) JUDICIAL REVIEW.—No action under this subsection shall be subject to judicial review.

"(f) RETENTION OF ALLOCATOR.—

"(1) IN GENERAL.—On selection of an allocator, the Administrator shall promptly—

"(A) using the procurement procedures authorized by section 109(e), contract with the allocator for the provision of allocation services in accordance with this section; and

"(B) notify each person named as a potentially responsible party at the facility that the allocator has been retained.

"(2) DISCRETION OF ALLOCATOR.—A contract with an allocator under paragraph (1) shall give the allocator broad discretion to conduct the allocation process in a fair, efficient, and impartial manner.

"(3) PROVISION OF INFORMATION.—

"(A) IN GENERAL.—Not later than 30 days after the selection of an allocator, the Administrator shall make available to the allocator and to each person named as a potentially responsible party for the facility—

"(i) any information or documents furnished under section 104(e)(2); and

"(ii) any other potentially relevant information concerning the facility and the potentially responsible parties at the facility.

"(B) PRIVILEGED INFORMATION.—The Administrator shall not make available any privileged information, except as otherwise authorized by law.

"(4) RECOVERY OF CONTRACT COSTS.—The costs of the Administrator in retaining an allocator under paragraph (1) shall be considered to be a response cost for all purposes of this Act.

"(g) ADDITIONAL PARTIES.—

"(1) IN GENERAL.—Any person may propose to the allocator the name of an additional potentially responsible party at a facility, or otherwise provide the allocator with information pertaining to a facility or to an allocation, until the date that is 60 days after the later of—

"(A) the date of issuance of the initial list described in subsection (d)(5)(A); or

"(B) the date of retention of the allocator under subsection (f)(1)(A).

"(2) NEXUS.—Any proposal under paragraph (1) to add a potentially responsible party shall include all information reasonably available to the person making the proposal regarding the nexus between the additional potentially responsible party and the facility.

"(3) FINAL LIST.—

"(A) IN GENERAL.—The allocator shall issue a final list of all parties that will be subject to the allocation process (referred to in this section as the 'allocation parties') not later than 120 days after publication of the initial list under subsection (d)(5)(A).

"(B) STANDARD.—The allocator shall include each party proposed under paragraph (1) in the final list of allocation parties unless the allocator determines that the party is not liable under section 107.

"(C) IDENTIFICATION OF DE MINIMIS CONTRIBUTORS.—

"(i) IN GENERAL.—In compiling the final list of allocation parties, the allocator shall identify, to the extent possible, all parties entitled to the de minimis contributor exemption under section 107(s) and provide a list of the parties identified to the Administrator.

"(ii) NOTIFICATION OF EXEMPTION.—Not later than 60 days after receipt of the list, the Administrator shall provide to each party identified on the list a written notification of the party's entitlement to the de minimis contributor exemption unless the Administrator publishes a written determination that—

"(I) no rational interpretation of the facts before the allocator supports the allocator's decision; or

"(II) the allocator's decision was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

"(iii) NO JUDICIAL REVIEW.—Any determination by the Administrator under this subparagraph shall not be subject to judicial review.

"(D) EFFECT.—If the allocator determines that there is an inadequate basis in law or fact to conclude that a party is liable based on the information presented by the nominating party or otherwise available to the allocator, the nominated party's costs (including reasonable attorney's fees) shall be borne by the party that proposed the addition of the party to the allocation.

"(h) FEDERAL, STATE, AND LOCAL AGENCIES.—

"(1) IN GENERAL.—Other than as set forth in this Act, any Federal, State, or local governmental department, agency, or instrumentality that is named as a potentially responsible party or an allocation party shall be subject to, and be entitled to the benefits of, the allocation process and allocation determination under this section to the same extent as any other party.

"(2) ORPHAN SHARE.—The Administrator or the Attorney General shall participate in the allocation proceeding as the representative of the Fund from which any orphan share shall be paid.

"(i) POTENTIALLY RESPONSIBLE PARTY SETTLEMENT.—

"(1) SUBMISSION.—At any time prior to the date of issuance of an allocation report under subsection (j)(6) or of a second or subsequent report under subsection (q), any group of potentially responsible parties for a facility may submit to the allocator a private allocation for any response action that is within the scope of the allocation under subsection (b)(6).

"(2) ADOPTION.—The allocator shall promptly adopt a private allocation under paragraph (1) as the allocation report if the private allocation—

"(A) is a binding allocation of 100 percent of the recoverable costs of the response action that is the subject of the allocation; and

"(B) does not allocate a share to—

"(i) any person who is not a signatory to the private allocation; or

"(ii) any person whose share would be part of the orphan share under subsection (l), unless the representative of the Fund is a signatory to the private allocation.

"(3) WAIVER OF RIGHTS.—Any signatory to a private allocation waives the right to seek from any other party for a facility—

"(A) recovery of any response cost that is the subject of the allocation; and

"(B) contribution under this Act with respect to any response action that is within the scope of the allocation.

"(j) ALLOCATION DETERMINATION.—

"(1) ALLOCATION PROCESS.—An allocator retained under subsection (f)(1) shall conduct an allocation process culminating in the issuance of a written report with a nonbinding equitable allocation of percentage shares of responsibility for any response action that is within the scope of the allocation under subsection (b)(6).

"(2) IDENTIFICATION OF DE MINIMIS CONTRIBUTORS.—

"(A) IN GENERAL.—If all parties entitled to the de minimis contributor exemption were not previously identified under subsection (g)(3)(C), the allocator's report under paragraph (1) shall identify all parties entitled to the de minimis contributor exemption under section 107(s).

"(B) PROCEDURE.—If a party is identified under subparagraph (A), the Administrator shall follow the procedural requirements of subsection (g)(3)(C)(ii).

"(2) COPIES OF REPORT.—An allocator shall provide the report issued under paragraph (1) to the Administrator and to the allocation parties.

"(3) INFORMATION-GATHERING AUTHORITIES.—

"(A) IN GENERAL.—An allocator may request information from any person in order to assist in the efficient completion of the allocation process.

"(B) REQUESTS.—Any person may request that an allocator request information under this paragraph.

"(C) AUTHORITY.—An allocator may exercise the information-gathering authority of the Administrator under section 104(e), including issuing an administrative subpoena to compel the production of a document or the appearance of a witness.

"(D) DISCLOSURE.—Notwithstanding any other law, any information submitted to the allocator in response to a subpoena issued under paragraph (4) shall be exempt from disclosure to any person under section 552 of title 5, United States Code.

"(E) ORDERS.—In the event of contumacy or a failure of a person to obey a subpoena issued under paragraph (4), an allocator may request the Attorney General to—

"(i) bring a civil action to enforce the subpoena; or

"(ii) if the person moves to quash the subpoena, to defend the motion.

"(F) FAILURE OF ATTORNEY GENERAL TO RESPOND.—If the Attorney General fails to provide any response to the allocator within 30 days of a request for enforcement of a subpoena or information request, the allocator may retain counsel to commence a civil action to enforce the subpoena or information request.

"(4) ADDITIONAL AUTHORITY.—An allocator may—

"(A) schedule a meeting or hearing and require the attendance of allocation parties at the meeting or hearing;

"(B) sanction an allocation party for failing to cooperate with the orderly conduct of the allocation process;

"(C) require that allocation parties wishing to present similar legal or factual positions consolidate the presentation of the positions;

"(D) obtain or employ support services, including secretarial, clerical, computer support, legal, and investigative services; and

"(E) take any other action necessary to conduct a fair, efficient, and impartial allocation process.

"(5) CONDUCT OF ALLOCATION PROCESS.—

"(A) IN GENERAL.—The allocator shall conduct the allocation process and render a decision based solely on the provisions of this section, including the allocation factors described in subsection (k).

"(B) OPPORTUNITY TO BE HEARD.—Each allocation party shall be afforded an opportunity to be heard (orally or in writing, at the option of an allocation party) and an opportunity to comment on a draft allocation report.

"(C) RESPONSES.—The allocator shall not be required to respond to comments.

"(D) STREAMLINING.—The allocator shall make every effort to streamline the allocation process and minimize the cost of conducting the allocation.

"(6) ALLOCATION REPORT.—

"(A) DEADLINE.—

"(i) IN GENERAL.—The allocator shall provide a written allocation report to the Administrator and the allocation parties not later than 180 days after the date of issuance of the final list of allocation parties under subsection (g)(3)(A) that specifies the allocation share of each potentially responsible party and any orphan shares, as determined by the allocator.

"(ii) EXTENSION.—On request by the allocator and for good cause shown, the Administrator may extend the time to complete the report by not more than 90 days.

"(B) BREAKDOWN OF ALLOCATION SHARES INTO TIME PERIODS.—The allocation share for each potentially responsible party with respect to a mandatory allocation facility at which 1 or more persons are liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for conduct prior to December 11, 1980, shall be comprised of percentage shares of responsibility stated separately for status or conduct prior to December 11, 1980, and status or conduct on or after December 11, 1980.

"(k) EQUITABLE FACTORS FOR ALLOCATION.—The allocator shall prepare a nonbinding allocation of percentage shares of responsibility to each allocation party and to the orphan share, in accordance with this section and without regard to any theory of joint and several liability, based on—

"(1) the amount of hazardous substances contributed by each allocation party;

"(2) the degree of toxicity of hazardous substances contributed by each allocation party;

"(3) the mobility of hazardous substances contributed by each allocation party;

"(4) the degree of involvement of each allocation party in the generation, transportation, treatment, storage, or disposal of hazardous substances;

"(5) the degree of care exercised by each allocation party with respect to hazardous substances, taking into account the characteristics of the hazardous substances;

"(6) the cooperation of each allocation party in contributing to any response action and in providing complete and timely information to the allocator; and

"(7) such other equitable factors as the allocator determines are appropriate.

"(l) ORPHAN SHARES.—

"(1) IN GENERAL.—The allocator shall determine whether any percentage of responsibility for the response action shall be allocable to the orphan share.

"(2) MAKEUP OF ORPHAN SHARE.—The orphan share shall consist of—

"(A) any share that the allocator determines is attributable to an allocation party that is insolvent or defunct and that is not affiliated with any financially viable allocation party;

"(B) any share that the allocator determines is attributable to an allocation party (other than a department, agency, or instrumentality of the United States) at a vessel or facility at which one or more persons is liable or potentially liable pursuant to section 107(a)(1) (C) or (D) for status or conduct prior to December 11, 1980, to the extent such allocation party's share is based on status or conduct prior to December 11, 1980; and

"(C) the difference between the aggregate share that the allocator determines is attributable to a person and the aggregate share actually assumed by the person in a settlement with the United States if—

"(i) the person is eligible for an expedited settlement with the United States under section 122 based on limited ability to pay response costs;

"(ii) the liability of the person is eliminated, limited, or reduced by any provision of this Act; or

"(iii) the person settled with the United States before the completion of the allocation.

"(3) UNATTRIBUTABLE SHARES.—A share attributable to a hazardous substance that the allocator specifically determines was disposed at the site prior to December 11, 1980, but which cannot be attributed to any identified and viable party shall be considered an orphan share. All other unattributable shares shall be distributed among the allocation parties and the orphan share in accordance with the allocated share assigned to each.

"(m) INFORMATION REQUESTS.—

"(1) DUTY TO ANSWER.—Each person that receives an information request or subpoena from the allocator shall provide a full and timely response to the request.

"(2) CERTIFICATION.—An answer to an information request by an allocator shall include a certification by a representative that meets the criteria established in section 270.11(a) of title 40, Code of Federal Regulations (or any successor regulation), that—

"(A) the answer is correct to the best of the representative's knowledge;

"(B) the answer is based on a diligent good faith search of records in the possession or control of the person to whom the request was directed;

"(C) the answer is based on a reasonable inquiry of the current (as of the date of the answer) officers, directors, employees, and agents of the person to whom the request was directed;

"(D) the answer accurately reflects information obtained in the course of conducting the search and the inquiry;

"(E) the person executing the certification understands that there is a duty to supplement any answer if, during the allocation process, any significant additional, new, or different information becomes known or available to the person; and

"(F) the person executing the certification understands that there are significant penalties for submitting false information, including the possibility of a fine or imprisonment for a knowing violation.

"(n) PENALTIES.—

"(1) CIVIL.—

"(A) IN GENERAL.—A person that fails to submit a complete and timely answer to an information request, a request for the production of a document, or a summons from an allocator, submits a response that lacks the certification required under subsection (m)(2), or knowingly makes a false or misleading material statement or representation in any statement, submission, or testimony during the allocation process (including a statement or representation in connection with the nomination of another potentially responsible party) shall be subject to a civil penalty of not more than $10,000 per day of violation.

"(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

"(2) CRIMINAL.—A person that knowingly and willfully makes a false material statement or representation in the response to an information request or subpoena issued by the allocator under subsection (m) shall be considered to have made a false statement on a matter within the jurisdiction of the United States within the meaning of section 1001 of title 18, United States Code.

"(o) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

"(1) DOCUMENT REPOSITORY.—

"(A) IN GENERAL.—The allocator shall establish and maintain a document repository containing copies of all documents and information provided by the Administrator or any allocation party under this section or generated by the allocator during the allocation process.

"(B) AVAILABILITY.—Subject to paragraph (2), the documents and information in the

document repository shall be available only to an allocation party for review and copying at the expense of the allocation party.

"(2) CONFIDENTIALITY.—

"(A) IN GENERAL.—Each document or material submitted to the allocator or placed in the document repository and the record of any information generated or obtained during the allocation process shall be confidential.

"(B) MAINTENANCE.—The allocator, each allocation party, the Administrator, and the Attorney General—

"(i) shall maintain the documents, materials, and records of any depositions or testimony adduced during the allocation as confidential; and

"(ii) shall not use any such document or material or the record in any other matter or proceeding or for any purpose other than the allocation process.

"(C) DISCLOSURE.—Notwithstanding any other law, the documents and materials and the record shall not be subject to disclosure to any person under section 552 of title 5, United States Code.

"(D) DISCOVERY AND ADMISSIBILITY.—

"(i) IN GENERAL.—Subject to clause (ii), the documents and materials and the record shall not be subject to discovery or admissible in any other Federal, State, or local judicial or administrative proceeding, except—

"(I) a new allocation under subsection (q) or (v) for the same response action; or

"(II) an initial allocation under this section for a different response action at the same facility.

"(ii) OTHERWISE DISCOVERABLE OR ADMISSIBLE.—

"(I) DOCUMENT OR MATERIAL.—If the original of any document or material submitted to the allocator or placed in the document repository was otherwise discoverable or admissible from a party, the original document, if subsequently sought from the party, shall remain discoverable or admissible.

"(II) FACTS.—If a fact generated or obtained during the allocation was otherwise discoverable or admissible from a witness, testimony concerning the fact, if subsequently sought from the witness, shall remain discoverable or admissible.

"(3) NO WAIVER OF PRIVILEGE.—The submission of testimony, a document, or information under the allocation process shall not constitute a waiver of any privilege applicable to the testimony, document, or information under any Federal or State law or rule of discovery or evidence.

"(4) PROCEDURE IF DISCLOSURE SOUGHT.—

"(A) NOTICE.—A person that receives a request for a statement, document, or material submitted for the record of an allocation proceeding, shall—

"(i) promptly notify the person that originally submitted the item or testified in the allocation proceeding; and

"(ii) provide the person that originally submitted the item or testified in the allocation proceeding an opportunity to assert and defend the confidentiality of the item or testimony.

"(B) RELEASE.—No person may release or provide a copy of a statement, document, or material submitted, or the record of an allocation proceeding, to any person not a party to the allocation except—

"(i) with the written consent of the person that originally submitted the item or testified in the allocation proceeding; or

"(ii) as may be required by court order.

"(5) CIVIL PENALTY.—

"(A) IN GENERAL.—A person that fails to maintain the confidentiality of any statement, document, or material or the record generated or obtained during an allocation proceeding, or that releases any information in violation of this section, shall be subject to a civil penalty of not more than $25,000 per violation.

"(B) ASSESSMENT OF PENALTY.—A penalty may be assessed by the Administrator in accordance with section 109 or by any allocation party in a citizen suit brought under section 310.

"(C) DEFENSES.—In any administrative or judicial proceeding, it shall be a complete defense that any statement, document, or material or the record at issue under subparagraph (A)—

"(i) was in, or subsequently became part of, the public domain, and did not become part of the public domain as a result of a violation of this subsection by the person charged with the violation;

"(ii) was already known by lawful means to the person receiving the information in connection with the allocation process; or

"(iii) became known to the person receiving the information after disclosure in connection with the allocation process and did not become known as a result of any violation of this subsection by the person charged with the violation.

"(p) REJECTION OF ALLOCATION REPORT.—

"(1) REJECTION.—The Administrator and the Attorney General may jointly reject a report issued by an allocator only if the Administrator and the Attorney General jointly publish, not later than 180 days after the Administrator receives the report, a written determination that—

"(A) no rational interpretation of the facts before the allocator, in light of the factors required to be considered, would form a reasonable basis for the shares assigned to the parties; or

"(B) the allocation process was directly and substantially affected by bias, procedural error, fraud, or unlawful conduct.

"(2) FINALITY.—A report issued by an allocator may not be rejected after the date that is 180 days after the date on which the United States accepts a settlement offer (excluding an expedited settlement under section 122) based on the allocation.

"(3) JUDICIAL REVIEW.—Any determination by the Administrator or the Attorney General under this subsection shall not be subject to judicial review unless 2 successive allocation reports relating to the same response action are rejected, in which case any allocation party may obtain judicial review of the second rejection in a United States district court under subchapter II of chapter 5 of part I of title 5, United States Code.

"(4) DELEGATION.—The authority to make a determination under this subsection may not be delegated to any officer or employee below the level of an Assistant Administrator or Acting Assistant Administrator or an Assistant Attorney General or Acting Assistant Attorney General with authority for implementing this Act.

"(q) SECOND AND SUBSEQUENT ALLOCATIONS.—

"(1) IN GENERAL.—If a report is rejected under subsection (p), the allocation parties shall select an allocator under subsection (e) to perform, on an expedited basis, a new allocation based on the same record available to the previous allocator.

"(2) MORATORIUM AND TOLLING.—The moratorium and tolling provisions of subsection (c) shall be extended until the date that is 180 days after the date of the issuance of any second or subsequent allocation report under paragraph (1).

"(3) SAME ALLOCATOR.—The allocation parties may select the same allocator who performed 1 or more previous allocations at the facility, except that the Administrator may determine under subsection (e) that an allocator whose previous report at the same facility has been rejected under subsection (p) is unqualified to serve.

"(r) SETTLEMENTS BASED ON ALLOCATIONS.—

"(1) DEFINITION.—In this subsection, the term 'all settlements' includes any orphan share allocated under subsection (l).

"(2) IN GENERAL.—Unless an allocation report is rejected under subsection (p), any allocation party at a mandatory allocation facility (including an allocation party whose allocated share is funded partially or fully by orphan share funding under subsection (l)) shall be entitled to resolve the liability of the party to the United States for response actions subject to allocation if, not later than 90 days after the date of issuance of a report by the allocator, the party—

"(A) offers to settle with the United States based on the percentage share specified by the allocator; and

"(B) agrees to the other terms and conditions stated in this subsection.

"(3) PROVISIONS OF SETTLEMENTS.—

"(A) IN GENERAL.—A settlement based on an allocation under this section—

"(i) may consist of a cash-out settlement or an agreement for the performance of a response action; and

"(ii) shall include—

"(I) a waiver of contribution rights against all persons that are potentially responsible parties for any response action addressed in the settlement;

"(II) a covenant not to sue that is consistent with section 122(f) and, except in the case of a cash-out settlement, provisions regarding performance or adequate assurance of performance of the response action;

"(III) a premium, calculated on a facility-specific basis and subject to the limitations on premiums stated in paragraph (5), that reflects the actual risk to the United States of not collecting unrecovered response costs for the response action, despite the diligent prosecution of litigation against any viable allocation party that has not resolved the liability of the party to the United States, except that no premium shall apply if all allocation parties participate in the settlement or if the settlement covers 100 percent of the response costs subject to the allocation;

"(IV) complete protection from all claims for contribution regarding the response action addressed in the settlement; and

"(V) provisions through which a settling party shall receive prompt reimbursement from the Fund under subsection (s) of any response costs incurred by the party for any response action that is the subject of the allocation in excess of the allocated share of the party, including the allocated portion of any orphan share.

"(B) RIGHT TO REIMBURSEMENT.—A right to reimbursement under subparagraph (A)(ii)(V) shall not be contingent on recovery by the United States of any response costs from any person other than the settling party.

"(4) REPORT.—The Administrator shall report annually to Congress on the administration of the allocation process under this section, providing in the report—

"(A) information comparing allocation results with actual settlements at multiparty facilities;

"(B) a cumulative analysis of response action costs recovered through post-allocation

litigation or settlements of post-allocation litigation;

"(C) a description of any impediments to achieving complete recovery; and

"(D) a complete accounting of the costs incurred in administering and participating in the allocation process.

"(5) PREMIUM.—In each settlement under this subsection, the premium authorized—

"(A) shall be determined on a case-by-case basis to reflect the actual litigation risk faced by the United States with respect to any response action addressed in the settlement; but

"(B) shall not exceed—

"(i) 5 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 80 percent and less than 100 percent of responsibility for the response action;

"(ii) 10 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 60 percent and not more than 80 percent of responsibility for the response action;

"(iii) 15 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for more than 40 percent and not more than 60 percent of responsibility for the response action; or

"(iv) 20 percent of the total costs assumed by a settling party if all settlements (including any orphan share) account for 40 percent or less of responsibility for the response; and

"(C) shall be reduced proportionally by the percentage of the allocated share for that party paid through orphan funding under subsection (l).

"(s) FUNDING OF ORPHAN SHARES.—

"(1) REIMBURSEMENT.—For each settlement agreement entered into under subsection (r), the Administrator shall promptly reimburse the allocation parties for any costs incurred that are attributable to the orphan share, as determined by the allocator.

"(2) ENTITLEMENT.—Paragraph (1) constitutes an entitlement to any allocation party eligible to receive a reimbursement.

"(3) AMOUNTS OWED.—Any amount due and owing in excess of available appropriations in any fiscal year shall be paid from amounts made available in subsequent fiscal years, along with interest on the unpaid balances at the rate equal to that of the current average market yield on outstanding marketable obligations of the United States with a maturity of 1 year.

"(4) DOCUMENTATION AND AUDITING.—The Administrator—

"(A) shall require that any claim for reimbursement be supported by documentation of actual costs incurred; and

"(B) may require an independent auditing of any claim for reimbursement.

"(t) POST-ALLOCATION CONTRIBUTION.—

"(1) IN GENERAL.—Subject to paragraph (2), an allocation party (including a party that is subject to an order under section 106 or a settlement decree) that incurs costs after the date of enactment of this section for implementation of a response action that is the subject of an allocation under this section to an extent that exceeds the percentage share of the allocation party, as determined by the allocator, shall be entitled to prompt reimbursement of the excess amount, including any orphan share, from the Fund, unless the allocation report is rejected under subsection (p).

"(2) EXCEPTION.—No person whose allocated share is fully funded by the orphan share pursuant to subsection (l)(2)(B) shall be subject to an order pursuant to section 106 issued after the date of enactment of this section.

"(3) NOT CONTINGENT.—The right to reimbursement under paragraph (1) shall not be contingent on recovery by the United States of a response cost from any other person.

"(4) TERMS AND CONDITIONS.—

"(A) RISK PREMIUM.—A reimbursement shall be reduced by the amount of the litigation risk premium under subsection (r)(5) that would apply to a settlement by the allocation party concerning the response action, based on the total allocated shares of the parties that have not reached a settlement with the United States.

"(B) TIMING.—

"(i) IN GENERAL.—A reimbursement shall be paid out during the course of the response action that was the subject of the allocation, using reasonable progress payments at significant milestones.

"(ii) CONSTRUCTION.—Reimbursement for the construction portion of the work shall be paid out not later than 120 days after the date of completion of the construction.

"(C) EQUITABLE OFFSET.—A reimbursement is subject to equitable offset or recoupment by the Administrator at any time if the allocation party fails to perform the work in a proper and timely manner.

"(D) INDEPENDENT AUDITING.—The Administrator may require independent auditing of any claim for reimbursement.

"(E) WAIVER.—An allocation party seeking reimbursement waives the right to seek recovery of response costs in connection with the response action, or contribution toward the response costs, from any other person.

"(F) BAR.—An administrative order shall be in lieu of any action by the United States or any other person against the allocation party for recovery of response costs in connection with the response action, or for contribution toward the costs of the response action.

"(u) POST-SETTLEMENT LITIGATION.—

"(1) IN GENERAL.—Subject to subsections (q) and (r), and on the expiration of the moratorium period under subsection (c)(4), the Administrator may commence an action under section 107 against an allocation party that has not resolved the liability of the party to the United States following allocation and may seek to recover response costs not recovered through settlements with other persons.

"(2) ORPHAN SHARE.—The recoverable costs shall include any orphan share determined under subsection (l), but shall not include any share allocated to a Federal, State, or local governmental agency, department, or instrumentality.

"(3) IMPLEADER.—A defendant in an action under paragraph (1) may implead an allocation party only if the allocation party did not resolve liability to the United States.

"(4) CERTIFICATION.—In commencing or maintaining an action under section 107 against an allocation party after the expiration of the moratorium period under subsection (c)(4), the Attorney General shall certify in the complaint that the defendant failed to settle the matter based on the share that the allocation report assigned to the party.

"(5) RESPONSE COSTS.—

"(A) ALLOCATION PROCEDURE.—The cost of implementing the allocation procedure under this section, including reasonable fees and expenses of the allocator, shall be considered as a necessary response cost.

"(B) FUNDING OF ORPHAN SHARES.—The cost attributable to funding an orphan share under this section—

"(i) shall be considered as a necessary cost of response cost; and

"(ii) shall be recoverable in accordance with section 107 only from an allocation party that does not reach a settlement and does not receive an administrative order under subsection (r) or (t).

"(v) NEW INFORMATION.—

"(1) IN GENERAL.—An allocation under this section shall be final, except that any settling party, including the United States, may seek a new allocation with respect to the response action that was the subject of the settlement by presenting the Administrator with clear and convincing evidence that—

"(A) the allocator did not have information concerning—

"(i) 35 percent or more of the materials containing hazardous substances at the facility; or

"(ii) 1 or more persons not previously named as an allocation party that contributed 15 percent or more of materials containing hazardous substances at the facility; and

"(B) the information was discovered subsequent to the issuance of the report by the allocator.

"(2) NEW ALLOCATION.—Any new allocation of responsibility—

"(A) shall proceed in accordance with this section;

"(B) shall be effective only after the date of the new allocation report; and

"(C) shall not alter or affect the original allocation with respect to any response costs previously incurred.

"(w) ALLOCATOR'S DISCRETION.—The Administrator shall not issue any rule or order that limits the discretion of the allocator in the conduct of the allocation.

"(x) ILLEGAL ACTIVITIES.—Section 107 (n), (o), (p), (q), (r), (s), (t), and (u), section 112(g), and (l)(2)(B) shall not apply to any person whose liability for response costs under section 107(a)(1) is otherwise based on any act, omission, or status that is determined by a court or administrative body of competent jurisdiction, within the applicable statute of limitation, to have been a violation of any Federal or State law pertaining to the treatment, storage, disposal, or handling of hazardous substances if the violation pertains to a hazardous substance, the release or threat of release of which caused the incurrence of response costs at the vessel or facility.".

SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.

(a) LIABILITY OF CONTRACTORS.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 303(a), is amended by adding at the end the following:

"(G) LIABILITY OF CONTRACTORS.—

"(i) IN GENERAL.—The term 'owner or operator' does not include a response action contractor (as defined in section 119(e)).

"(ii) LIABILITY LIMITATIONS.—A person described in clause (i) shall not, in the absence of negligence by the person, be considered to—

"(I) cause or contribute to any release or threatened release of a hazardous substance, pollutant, or contaminant;

"(II) arrange for disposal or treatment of a hazardous substance, pollutant, or contaminant;

"(III) arrange with a transporter for transport or disposal or treatment of a hazardous substance, pollutant, or contaminant; or

"(IV) transport a hazardous substance, pollutant, or contaminant.

"(iii) EXCEPTION.—This subparagraph does not apply to a person potentially responsible under section 106 or 107 other than a person

associated solely with the provision of a response action or a service or equipment ancillary to a response action.".

(b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—Section 119(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(a)) is amended—

(1) in paragraph (1) by striking "title or under any other Federal law" and inserting "title or under any other Federal or State law"; and

(2) in paragraph (2)—

(A) by striking "(2) NEGLIGENCE, ETC.—Paragraph (1)" and inserting the following:

"(2) NEGLIGENCE AND INTENTIONAL MISCONDUCT; APPLICATION OF STATE LAW.—

"(A) NEGLIGENCE AND INTENTIONAL MISCONDUCT.—

"(i) IN GENERAL.—Paragraph (1)"; and

(B) by adding at the end the following:

"(ii) STANDARD.—Conduct under clause (i) shall be evaluated based on the generally accepted standards and practices in effect at the time and place at which the conduct occurred.

"(iii) PLAN.—An activity performed in accordance with a plan that was approved by the Administrator shall not be considered to constitute negligence under clause (i).

"(B) APPLICATION OF STATE LAW.—Paragraph (1) shall not apply in determining the liability of a response action contractor under the law of a State if the State has adopted by statute a law determining the liability of a response action contractor.".

(c) EXTENSION OF INDEMNIFICATION AUTHORITY.—Section 119(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(1)) is amended by adding at the end the following: "The agreement may apply to a claim for negligence arising under Federal or State law.".

(d) INDEMNIFICATION DETERMINATIONS.—Section 119(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)) is amended by striking paragraph (4) and inserting the following:

"(4) DECISION TO INDEMNIFY.—

"(A) IN GENERAL.—For each response action contract for a vessel or facility, the Administrator shall make a decision whether to enter into an indemnification agreement with a response action contractor.

"(B) STANDARD.—The Administrator shall enter into an indemnification agreement to the extent that the potential liability (including the risk of harm to public health, safety, environment, and property) involved in a response action exceed or are not covered by insurance available to the contractor at the time at which the response action contract is entered into that is likely to provide adequate long-term protection to the public for the potential liability on fair and reasonable terms (including consideration of premium, policy terms, and deductibles).

"(C) DILIGENT EFFORTS.—The Administrator shall enter into an indemnification agreement only if the Administrator determines that the response action contractor has made diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

"(D) CONTINUED DILIGENT EFFORTS.—An indemnification agreement shall require the response action contractor to continue, not more frequently than annually, to make diligent efforts to obtain insurance coverage from non-Federal sources to cover potential liabilities.

"(E) LIMITATIONS ON INDEMNIFICATION.—An indemnification agreement provided under this subsection shall include deductibles and shall place limits on the amount of indemnification made available in amounts determined by the contracting agency to be appropriate in light of the unique risk factors associated with the cleanup activity.".

(e) INDEMNIFICATION FOR THREATENED RELEASES.—Section 119(c)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting "or threatened release" after "release" each place it appears.

(f) EXTENSION OF COVERAGE TO ALL RESPONSE ACTIONS.—Section 119(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(1)) is amended—

(1) in subparagraph (D) by striking "carrying out an agreement under section 106 or 122"; and

(2) in the matter following subparagraph (D)—

(A) by striking "any remedial action under this Act at a facility listed on the National Priorities List, or any removal under this Act," and inserting "any response action,"; and

(B) by inserting before the period at the end the following: "or to undertake appropriate action necessary to protect and restore any natural resource damaged by the release or threatened release".

(g) DEFINITION OF RESPONSE ACTION CONTRACTOR.—Section 119(e)(2)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking "and is carrying out such contract" and inserting "covered by this section and any person (including any subcontractor) hired by a response action contractor".

(h) SURETY BONDS.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended—

(1) in subsection (e)(2)(C) by striking ", and before January 1, 1996,"; and

(2) in subsection (g)(5) by striking ", or after December 31, 1995".

(i) NATIONAL UNIFORM STATUTE OF REPOSE.—Section 119 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9619) is amended by adding at the end the following:

"(h) LIMITATION ON ACTIONS AGAINST RESPONSE ACTION CONTRACTORS.—

"(1) IN GENERAL.—No action may be brought as a result of the performance of services under a response contract against a response action contractor after the date that is 7 years after the date of completion of work at any facility under the contract to recover—

"(A) injury to property, real or personal;

"(B) personal injury or wrongful death;

"(C) other expenses or costs arising out of the performance of services under the contract; or

"(D) contribution or indemnity for damages sustained as a result of an injury described in subparagraphs (A) through (C).

"(2) EXCEPTION.—Paragraph (1) does not bar recovery for a claim caused by the conduct of the response action contractor that is grossly negligent or that constitutes intentional misconduct.

"(3) INDEMNIFICATION.—This subsection does not affect any right of indemnification that a response action contractor may have under this section or may acquire by contract with any person.

"(i) STATE STANDARDS OF REPOSE.—Subsections (a)(1) and (h) shall not apply in determining the liability of a response action contractor if the State has enacted a statute of repose determining the liability of a response action contractor.".

SEC. 505. RELEASE OF EVIDENCE.

(a) TIMELY ACCESS TO INFORMATION FURNISHED UNDER SECTION 104(e).—Section 104(e)(7)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is amended by inserting after "shall be available to the public" the following: "not later than 14 days after the records, reports, or information is obtained".

(b) REQUIREMENT TO PROVIDE POTENTIALLY RESPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

(1) ABATEMENT ACTIONS.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended—

(A) by striking "(a) In addition" and inserting the following: "(a) ORDER.—"

"(1) IN GENERAL.—In addition"; and

(B) by adding at the end the following:

"(2) CONTENTS OF ORDER.—An order under paragraph (1) shall provide information concerning the evidence that indicates that each element of liability described in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.".

(2) SETTLEMENTS.—Section 122(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9622(e)(1)) is amended by inserting after subparagraph (C) the following:

"(D) For each potentially responsible party, the evidence that indicates that each element of liability contained in section 107(a)(1) (A), (B), (C), and (D), as applicable, is present.".

SEC. 506. CONTRIBUTION PROTECTION.

Section 113(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sentence by inserting "or cost recovery" after "contribution".

SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS AS OWNERS OR OPERATORS.

(a) DEFINITION.—Section 101(20) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(20)), as amended by section 502(a), is amended by adding at the end the following:

"(H) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—The term 'owner or operator' includes an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is organized and operated exclusively for religious, charitable, scientific, or educational purposes and that holds legal or equitable title to a vessel or facility.".

(b) LIMITATION ON LIABILITY.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 306(b), is amended by adding at the end the following:

"(u) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND EDUCATIONAL ORGANIZATIONS.—

"(1) LIMITATION ON LIABILITY.—Subject to paragraph (2), if an organization described in section 101(20)(I) holds legal or equitable title to a vessel or facility as a result of a charitable gift that is allowable as a deduction under section 170, 2055, or 2522 of the Internal Revenue Code of 1986 (determined without regard to dollar limitations), the liability of the organization shall be limited to the lesser of the fair market value of the

vessel or facility or the actual proceeds of the sale of the vessel or facility received by the organization.

"(2) CONDITIONS.—In order for an organization described in section 101(20)(I) to be eligible for the limited liability described in paragraph (1), the organization shall—

"(A) provide full cooperation, assistance, and vessel or facility access to persons authorized to conduct response actions at the vessel or facility, including the cooperation and access necessary for the installation, preservation of integrity, operation, and maintenance of any complete or partial response action at the vessel or facility;

"(B) provide full cooperation and assistance to the United States in identifying and locating persons who recently owned, operated, or otherwise controlled activities at the vessel or facility;

"(C) establish by a preponderance of the evidence that all active disposal of hazardous substances at the vessel or facility occurred before the organization acquired the vessel or facility; and

"(D) establish by a preponderance of the evidence that the organization did not cause or contribute to a release or threatened release of hazardous substances at the vessel or facility.

"(3) LIMITATION.—Nothing in this subsection affects the liability of a person other than a person described in section 101(20)(G) that meets the conditions specified in paragraph (2).".

SEC. 508. COMMON CARRIERS.

Section 107(b)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(b)(3)) is amended by striking "a published tariff and acceptance" and inserting "a contract".

SEC. 509. LIMITATION ON LIABILITY FOR RESPONSE COSTS.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607), as amended by section 505(b), is amended by adding at the end the following:

"(v) LIMITATION ON LIABILITY OF RAILROAD OWNERS.—Notwithstanding subsection (a)(1), a person that does not impede the performance of a response action or natural resource restoration shall not be liable under this Act to the extent that liability is based solely on the status of the person as a railroad owner or operator of a spur track, including a spur track over land subject to an easement, to a facility that is owned or operated by a person that is not affiliated with the railroad owner or operator, if—

"(1) the spur track provides access to a main line or branch line track that is owned or operated by the railroad;

"(2) the spur track is 10 miles long or less; and

"(3) the railroad owner or operator does not cause or contribute to a release or threatened release at the spur track.".

TITLE VI—FEDERAL FACILITIES

SEC. 601. TRANSFER OF AUTHORITIES.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by striking subsection (g) and inserting the following:

"(g) TRANSFER OF AUTHORITIES.—

"(1) DEFINITIONS.—In this section:

"(A) INTERAGENCY AGREEMENT.—The term 'interagency agreement' means an interagency agreement under this section.

"(B) TRANSFER AGREEMENT.—The term 'transfer agreement' means a transfer agreement under paragraph (3).

"(C) TRANSFEREE STATE.—The term 'transferee State' means a State to which authorities have been transferred under a transfer agreement.

"(2) STATE APPLICATION FOR TRANSFER OF AUTHORITIES.—A State may apply to the Administrator to exercise the authorities vested in the Administrator under this Act at any facility located in the State that is—

"(A) owned or operated by any department, agency, or instrumentality of the United States (including the executive, legislative, and judicial branches of government); and

"(B) listed on the National Priorities List.

"(3) TRANSFER OF AUTHORITIES.—

"(A) DETERMINATIONS.—The Administrator shall enter into a transfer agreement to transfer to a State the authorities described in paragraph (2) if the Administrator determines that—

"(i) the State has the ability to exercise such authorities in accordance with this Act, including adequate legal authority, financial and personnel resources, organization, and expertise;

"(ii) the State has demonstrated experience in exercising similar authorities;

"(iii) the State has agreed to be bound by all Federal requirements and standards under section 129 governing the design and implementation of the facility evaluation, remedial action plan, and remedial design; and

"(iv) the State has agreed to abide by the terms of any interagency agreement or agreements covering the Federal facility or facilities with respect to which authorities are being transferred in effect at the time of the transfer of authorities.

"(B) CONTENTS OF TRANSFER AGREEMENT.—A transfer agreement—

"(i) shall incorporate the determinations of the Administrator under subparagraph (A); and

"(ii) in the case of a transfer agreement covering a facility with respect to which there is no interagency agreement that specifies a dispute resolution process, shall require that within 120 days after the effective date of the transfer agreement, the State shall agree with the head of the Federal department, agency, or instrumentality that owns or operates the facility on a process for resolution of any disputes between the State and the Federal department, agency, or instrumentality regarding the selection of a remedial action for the facility; and

"(iii) shall not impose on the transferee State any term or condition other than that the State meet the requirements of subparagraph (A).

"(4) EFFECT OF TRANSFER.—

"(A) STATE AUTHORITIES.—A transferee State—

"(i) shall not be deemed to be an agent of the Administrator but shall exercise the authorities transferred under a transfer agreement in the name of the State; and

"(ii) shall have exclusive authority to exercise authorities that have been transferred.

"(B) EFFECT ON INTERAGENCY AGREEMENTS.—Nothing in this subsection shall require, authorize, or permit the modification or revision of an interagency agreement covering a facility with respect to which authorities have been transferred to a State under a transfer agreement (except for the substitution of the transferee State for the Administrator in the terms of the interagency agreement, including terms stating obligations intended to preserve the confidentiality of information) without the written consent of the Governor of the State and the head of the department, agency, or instrumentality.

"(5) SELECTED REMEDIAL ACTION.—The remedial action selected for a facility under section 129 by a transferee State shall constitute the only remedial action required to be conducted at the facility, and the transferee State shall be precluded from enforcing any other remedial action requirement under Federal or State law, except for—

"(A) any corrective action under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) that was initiated prior to the date of enactment of this subsection; and

"(B) any remedial action in excess of remedial action under section 129 that the State selects in accordance with paragraph (10).

"(6) DEADLINE.—

"(A) IN GENERAL.—The Administrator shall make a determination on an application by a State under paragraph (2) not later than 120 days after the date on which the Administrator receives the application.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of an application within the time period stated in subparagraph (A), the application shall be deemed to have been granted.

"(7) RESUBMISSION OF APPLICATION.—

"(A) IN GENERAL.—If the Administrator disapproves an application under paragraph (1), the State may resubmit the application at any time after receiving the notice of disapproval.

"(B) FAILURE TO ACT.—If the Administrator does not issue a notice of approval or notice of disapproval of a resubmitted application within the time period stated in paragraph (6)(A), the resubmitted application shall be deemed to have been granted.

"(8) JUDICIAL REVIEW.—A disapproval of a resubmitted application shall be subject to judicial review under section 113(b).

"(9) WITHDRAWAL OF AUTHORITIES.—The Administrator may withdraw the authorities transferred under a transfer agreement in whole or in part if the Administrator determines that the State—

"(A) is exercising the authorities, in whole or in part, in a manner that is inconsistent with the requirements of this Act;

"(B) has violated the transfer agreement, in whole or in part; or

"(C) no longer meets one of the requirements of paragraph (3).

"(10) STATE COST RESPONSIBILITY.—The State may require a remedial action that exceeds the remedial action selection requirements of section 121 if the State pays the incremental cost of implementing that remedial action over the most cost-effective remedial action that would result from the application of section 129.

"(11) DISPUTE RESOLUTION AND ENFORCEMENT.—

"(A) DISPUTE RESOLUTION.—

"(i) FACILITIES COVERED BY BOTH A TRANSFER AGREEMENT AND AN INTERAGENCY AGREEMENTS.—In the case of a facility with respect to which there is both a transfer agreement and an interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in the dispute resolution process provided for in the interagency agreement, except that the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(ii) FACILITIES COVERED BY A TRANSFER AGREEMENT BUT NOT AN INTERAGENCY AGREEMENT.—In the case of a facility with respect to which there is a transfer agreement but no interagency agreement, if the State does not concur in the remedial action proposed for selection by the Federal department, agency, or instrumentality, the Federal department, agency, or instrumentality and the State shall engage in dispute resolution as provide in paragraph (3)(B)(ii) under which the final level for resolution of the dispute shall be the head of the Federal department, agency, or instrumentality and the Governor of the State.

"(iii) FAILURE TO RESOLVE.—If no agreement is reached between the head of the Federal department, agency, or instrumentality and the Governor in a dispute resolution process under clause (i) or (ii), the Governor of the State shall make the final determination regarding selection of a remedial action. To compel implementation of the State's selected remedy, the State must bring a civil action in United States district court.

"(B) ENFORCEMENT.—

"(i) AUTHORITY; JURISDICTION.—An interagency agreement with respect to which there is a transfer agreement or an order issued by a transferee State shall be enforceable by a transferee State or by the Federal department, agency, or instrumentality that is a party to the interagency agreement only in the United States district court for the district in which the facility is located.

"(ii) REMEDIES.—The district court shall—

"(I) enforce compliance with any provision, standard, regulation, condition, requirement, order, or final determination that has become effective under the interagency agreement;

"(II) impose any appropriate civil penalty provided for any violation of an interagency agreement, not to exceed $25,000 per day;

"(III) compel implementation of the selected remedial action; and

"(IV) review a challenge by the Federal department, agency, or instrumentality to the remedial action selected by the State under this section, in accordance with section 113(j).

"(12) COMMUNITY PARTICIPATION.—If, prior to the date of enactment of this section, a Federal department, agency, or instrumentality had established for a facility covered by a transfer agreement a facility-specific advisory board or other community-based advisory group (designated as a 'site-specific advisory board', a 'restoration advisory board', or otherwise), and the Administrator determines that the board or group is willing and able to perform the responsibilities of a community response organization under section 117(e)(2), the board or group—

"(A) shall be considered to be a community response organization for the purposes of section 117 (e) (2), (3), (4), and (9), and (g) and sections 127 and 129; but

"(B) shall not be required to comply with, and shall not be considered to be a community response organization for the purposes of, section 117 (e) (1), (5), (6), (7), or (8) or (f).".

SEC. 602. LIMITATION ON CRIMINAL LIABLIITY OF FEDERAL OFFICERS, EMPLOYEES, AND AGENTS.

Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620) is amended by adding at the end the following:

"(i) CRIMINAL LIABILITY.—Notwithstanding any other provision of this Act or any other law, an officer, employee, or agent of the United States shall not be held criminally liable for a failure to comply, in any fiscal year, with a requirement to take a response action at a facility that is owned or operated by a department, agency, or instrumentality of the United States, under this Act, the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any other Federal or State law unless—

"(1) the officer, employee, or agent has not fully performed any direct responsibility or delegated responsibility that the officer, employee, or agent had under Executive Order 12088 (42 U.S.C. 4321 note) or any other delegation of authority to ensure that a request for funds sufficient to take the response action was included in the President's budget request under section 1105 of title 31, United States Code, for that fiscal year; or

"(2) appropriated funds were available to pay for the response action.".

SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL ACTION AT FEDERAL FACILITIES.

(a) IN GENERAL.—Section 311 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660) is amended by adding at the end the following:

"(h) FEDERAL FACILITIES.—

"(1) DESIGNATION.—The President may designate a facility that is owned or operated by any department, agency, or instrumentality of the United States, and that is listed or proposed for listing on the National Priorities List, to facilitate the research, development, and application of innovative technologies for remedial action at the facility.

"(2) USE OF FACILITIES.—

"(A) IN GENERAL.—A facility designated under paragraph (1) shall be made available to Federal departments and agencies, State departments and agencies, and public and private instrumentalities, to carry out activities described in paragraph (1).

"(B) COORDINATION.—The Administrator—

"(i) shall coordinate the use of the facilities with the departments, agencies, and instrumentalities of the United States; and

"(ii) may approve or deny the use of a particular innovative technology for remedial action at any such facility.

"(3) CONSIDERATIONS.—

"(A) EVALUATION OF SCHEDULES AND PENALTIES.—In considering whether to permit the application of a particular innovative technology for remedial action at a facility designated under paragraph (1), the Administrator shall evaluate the schedules and penalties applicable to the facility under any agreement or order entered into under section 120.

"(B) AMENDMENT OF AGREEMENT OR ORDER.—If, after an evaluation under subparagraph (A), the Administrator determines that there is a need to amend any agreement or order entered into pursuant to section 120, the Administrator shall comply with all provisions of the agreement or order, respectively, relating to the amendment of the agreement or order.".

(b) REPORT TO CONGRESS.—Section 311(e) of Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

(1) by striking "At the time" and inserting the following:

"(1) IN GENERAL.—At the time"; and

(2) by adding at the end the following:

"(2) ADDITIONAL INFORMATION.—A report under paragraph (1) shall include information on the use of facilities described in subsection (h)(1) for the research, development, and application of innovative technologies for remedial activity, as authorized under subsection (h).".

SEC. 604. FEDERAL FACILITY LISTING.

Section 120(h)(4)(C) of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(C)) is amended by adding at the end the following:

"(v) On identification of parcels of uncontaminated property under this paragraph, the President may provide notice that the listing does not include the identified uncontaminated parcels.".

SEC. 605. FEDERAL FACILITY LISTING DEFERRAL.

Paragraph (3) of section 120(d) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(d)), as designated by section 604, is amended by inserting after "persons" the following: ", but an appropriate factor as referred to in section 105(a)(8)(A) may include the extent to which the Federal agency has arranged with the Administrator or with a State to respond to the release or threatened release under other legal authority".

SEC. 606. TRANSFERS OF UNCONTAMINATED PROPERTY.

Section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)) is amended in the first sentence by striking "stored for one year or more,".

TITLE VII—NATURAL RESOURCE DAMAGES

SEC. 701. RESTORATION OF NATURAL RESOURCES.

(a) DEFINITIONS.—Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601), as amended by section 504(b), is amended by adding at the end the following:

"(52) BASELINE.—The term 'baseline' means the condition or conditions that would have existed at a natural resource had a release of hazardous substances not occurred.

"(53) COMPENSATORY RESTORATION.—The term 'compensatory restoration' means the provision of ecological services lost as a result of injury to or destruction or loss of a natural resource from the initial release giving rise to liability under section 107(a)(2)(C) until primary restoration has been achieved with respect to those services.

"(54) ECOLOGICAL SERVICE.—The term 'ecological service' means a physical or biological function performed by an ecological resource, including the human uses of such a function.

"(55) PRIMARY RESTORATION.—The term 'primary restoration' means rehabilitation, natural recovery, or replacement of an injured, destroyed, or lost natural resource, or acquisition of a substitute or alternative natural resource, to reestablish the baseline ecological service that the natural resource would have provided in the absence of a release giving rise to liability under section 107(a)(2)(C).

"(56) RESTORATION.—The term 'restoration' means primary restoration and compensatory restoration.".

(b) LIABILITY FOR NATURAL RESOURCE DAMAGES.—

(1) AMENDMENT.—Section 107(a) of the Comprehensive Environmental Response Compensation, and Liability Act of 1980 (42 U.S.C. 9607(a)) is amended—

(A) by inserting "IN GENERAL.—" after "(a)";

(B) by striking "Notwithstanding" and inserting the following:

"(1) PERSONS LIABLE.—Notwithstanding";

(C) by redesignating paragraphs (1), (2), (3), and (4) (as designated prior to the date of enactment of this Act) as subparagraphs (A),

(B), (C), and (D), respectively, and adjusting the margins accordingly;

(D) by striking "hazardous substance, shall be liable for—" and inserting the following: "hazardous substance,

shall be liable for the costs and damages described in paragraph (2).

"(2) COSTS AND DAMAGES.—A person described in paragraph (1) shall be liable for—";

(E) by striking subparagraph (C) of paragraph (2), as designated by subparagraph (D), and inserting the following:

"(C) damages for injury to, destruction of, or loss of the baseline ecological services of natural resources, including the reasonable costs of assessing such injury, destruction, or loss caused by a release; and";

(F) by striking "The amounts" and inserting the following:

"(3) INTEREST.—The amounts"; and

(G) in the first sentence of paragraph (3), as designated by subparagraph (F), by striking "subparagraphs (A) through (D)" and inserting "paragraph (2)".

(2) CONFORMING AMENDMENTS.—Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended—

(A) in subsection (d)(3) by striking "the provisions of paragraph (1), (2), (3), or (4) of subsection (a) of this section" and inserting "subsection (a)";

(B) in subsection (f)(1) by striking "subparagraph (C) of subsection (a)" each place it appears and inserting "subsection (a)(2)(C)".

(c) NATURAL RESOURCE DAMAGES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)) is amended—

(1) by inserting "NATURAL RESOURCE DAMAGES.—" after "(f)";

(2) by striking "(1) NATURAL RESOURCES LIABILITY.—In the case" and inserting the following:

"(1) LIABILITY.—

"(A) IN GENERAL.—In the case";

(3) in paragraph (1)(A), as designated by paragraph (2)—

(A) in the first sentence by inserting "the baseline ecological services of" after "loss of";

(B) in the third and fourth sentences, by striking "to restore, replace, or acquire the equivalent" each place it appears and inserting "for restoration";

(C) by inserting after the fourth sentence the following: "Sums recovered by an Indian tribe as trustee under this subsection shall be available for use only for restoration of such natural resources by the Indian tribe. A restoration conducted by the United States, a State, or an Indian tribe shall proceed only if it is technologically practicable, cost-effective, and consistent with all known or anticipated response actions at or near the facility."; and

(D) by striking "The measure of damages in any action" and all that follows through the end of the paragraph and inserting the following:

"(B) LIMITATIONS ON LIABILITY.—

"(i) MEASURE OF DAMAGES.—The measure of damages in any action under subsection (a)(2)(C) shall be limited to the reasonable costs of restoration and of assessing damages.

"(ii) NONUSE VALUES.—There shall be no recovery under this Act for any impairment of non-use values.

"(iii) NO DOUBLE RECOVERY.—A person that obtains a recovery of damages, response costs, assessment costs, or any other costs under this Act for injury to, destruction of, or loss of a natural resource caused by a release shall not be entitled to recovery under or any other Federal or State law for injury to or destruction or loss of the natural resource caused by the release.

"(iv) NO RETROACTIVE LIABILITY.—

"(I) COMPENSATORY RESTORATION.—There shall be no recovery from any person under this section for the costs of compensatory restoration for a natural resource injury, destruction, or loss that occurred prior to December 11, 1980.

"(II) PRIMARY RESTORATION.—There shall be no recovery from any person under this section for the costs of primary restoration if the natural resource injury, destruction, or loss for which primary restoration is sought and the release of the hazardous substance from which the injury resulted occurred wholly before December 11, 1980.

"(v) BURDEN OF PROOF ON THE ISSUE OF THE DATE OF OCCURRENCE OF A RELEASE.—The trustee for an injured, destroyed, or lost natural resource bears the burden of demonstrating that any amount of costs of compensatory restoration that the trustee seeks under this section is to compensate for an injury, destruction, or loss (or portion of an injury, destruction, or loss) that occurred on or after December 11, 1980."; and

(4) by adding at the end the following:

"(3) SELECTION OF RESTORATION METHOD.—When selecting appropriate restoration measures, including natural recovery, a trustee shall select the most cost-effective method of achieving restoration.".

SEC. 702. ASSESSMENT OF DAMAGES.

(a) DAMAGE ASSESSMENTS.—Section 107(f)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking subparagraph (C) and inserting the following:

"(C) DAMAGE ASSESSMENT.—

"(i) REGULATION.—A natural resource damage assessment conducted for the purposes of this Act made by a Federal, State, or tribal trustee shall be performed, to the extent practicable, in accordance with—

"(I) the regulation issued under section 301(c); and

"(II) generally accepted scientific and technical standards and methodologies to ensure the validity and reliability of assessment results.

"(ii) FACILITY-SPECIFIC CONDITIONS AND RESTORATION REQUIREMENTS.—Injury determination, restoration planning, and quantification of restoration costs shall, to the extent practicable, be based on an assessment of facility-specific conditions and restoration requirements.

"(iii) USE BY TRUSTEE.—A natural resource damage assessment under clause (i) may be used by a trustee as the basis for a natural resource damage claim only if the assessment demonstrates that the hazardous substance release in question caused the alleged natural resource injury.

"(iv) COST RECOVERY.—As part of a trustee's claim, a trustee may recover only the reasonable damage assessment costs that were incurred directly in relation to the site-specific conditions and restoration measures that are the subject of the natural resource damage action.".

(b) REGULATIONS.—

(1) NEW REGULATIONS.—Section 301 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651) is amended by striking subsection (c) and inserting the following:

"(c) REGULATIONS FOR DAMAGE ASSESSMENTS.—

"(1) IN GENERAL.—The President, acting through Federal officials designated by the National Contingency Plan under section 107(f)(2), shall issue a regulation for the assessment of restoration damages and assessment costs for injury to, destruction of, or loss of natural resources resulting from a release of a hazardous substance for the purposes of this Act.

"(2) CONTENTS.—The regulation under paragraph (1) shall—

"(A) specify protocols for conducting assessments in individual cases to determine the injury, destruction, or loss of baseline ecological services of the environment;

"(B) identify the best available procedures to determine damages for the reasonable cost of restoration and assessment;

"(C) take into consideration the ability of a natural resource to recover naturally and the availability of replacement or alternative resources; and

"(D) specify an appropriate mechanism for the cooperative designation of a single lead decisionmaking trustee at a site where more than one Federal, State, or Indian tribe trustee intends to conduct an assessment, which designation shall occur not later than 180 days after the date of first notice to the responsible parties that a natural resource damage assessment will be made.

"(3) BIENNIAL REVIEW.—The regulation under paragraph (1) shall be reviewed and revised as appropriate every 2 years.".

(2) INTERIM PROVISION.—Until such time as the regulations issued pursuant to the amendment made by paragraph (1) become effective, the regulations issued under section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9651(c)) shall remain in effect and shall be applied, subject to challenge on any ground, in the same manner and to the same extent as if this Act had not been enacted, except to the extent that those regulations are inconsistent with this Act or an amendment made by this Act.

SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS AND RESOURCE RESTORATION STANDARDS AND ALTERNATIVES.

(a) RESTORATION STANDARDS AND ALTERNATIVES.—Section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), as amended by section 701(b)(4), is amended by adding at the end the following:

"(4) CONSISTENCY WITH RESPONSE ACTIONS.—A restoration standard or restoration alternative selected by a trustee for a facility listed or proposed for listing on the National Priorities List shall not be duplicative of or inconsistent with actions undertaken pursuant to section 104, 106, 121, or 129.".

(b) RESPONSE ACTIONS.—

(1) ABATEMENT ACTION.—Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606(a)) is amended by adding at the end the following: "The President shall not take action under this subsection except such action as is necessary to protect the public health and the baseline ecological services of the environment.".

(2) LIMITATION ON DEGREE OF CLEANUP.—Section 121(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621(a)), as amended by section 402(1), is amended by adding at the end the following:

"(7) LIMITATION.—

"(A) IN GENERAL.—The Administrator shall not select a remedial action under this section that goes beyond the measures necessary to protect human health and the environment and restore the baseline ecological services of the environment.

"(B) CONSIDERATIONS.—In evaluating and selecting remedial actions, the Administrator shall take into account the potential for injury to or destruction or loss of a natural resource resulting from such actions.

"(C) NO LIABILITY.—No person shall be liable for injury to or destruction or loss of a natural resource resulting from a response action or remedial action selected by the Administrator that is properly implemented without negligence or other improper performance on the part of a potentially responsible party or other person acting at the direction of a potentially responsible party.".

SEC. 704. MISCELLANEOUS AMENDMENTS.

Section 113(f)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended in the third sentence by inserting "and natural resource damages" after "costs".

TITLE VIII—MISCELLANEOUS

SEC. 801. RESULT-ORIENTED CLEANUPS.

(a) AMENDMENT.—Section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

(1) by striking "and" at the end of paragraph (9);

(2) by striking the period at the end of paragraph (10) and inserting "; and"; and

(3) by inserting after paragraph (10) the following:

"(11) procedures for conducting response actions, including facility evaluations, remedial investigations, feasibility studies, remedial action plans, remedial designs, and remedial actions, which procedures shall—

"(A) use a results-oriented approach to minimize the time required to conduct response measures and reduce the potential for exposure to the hazardous substances, pollutants, and contaminants in an efficient, timely, and cost-effective manner;

"(B) require, at a minimum, expedited facility evaluations and risk assessments, timely negotiation of response action goals, a single engineering study, streamlined oversight of response actions, and consultation with interested parties throughout the response action process;

"(C) be subject to the requirements of sections 117, 120, 121, and 129 in the same manner and to the same degree as those sections apply to response actions; and

"(D) be required to be used for each remedial action conducted under this Act unless the Administrator determines that their use would not be cost-effective or result in the selection of a response action that achieves the goals of protecting human health and the environment stated in section 121(a)(1)(B).".

(b) AMENDMENT OF NATIONAL HAZARDOUS SUBSTANCE RESPONSE PLAN.—Not later than 180 days after the date of enactment of this Act, the Administrator, after notice and opportunity for public comment, shall amend the National Hazardous Substance Response Plan under section 105(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605(a)) to include the procedures required by the amendment made by subsection (a).

SEC. 802. NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605), as amended by section 408(a)(1)(B), is amended by adding at the end the following:

"(i) NATIONAL PRIORITIES LIST.—

"(1) ADDITIONAL VESSELS AND FACILITIES.—

"(A) LIMITATION.—

"(i) IN GENERAL.—After the date of the enactment of this subsection, the President may add vessels and facilities to the National Priorities List only in accordance with the following schedule:

"(I) Not more than 30 vessels and facilities in 1996.

"(II) Not more than 25 vessels and facilities in 1997.

"(III) Not more than 20 vessels and facilities in 1998.

"(IV) Not more than 20 vessels and facilities in 1999.

"(V) Not more than 10 vessels and facilities in 2000.

"(VI) Not more than 10 vessels and facilities in 2001.

"(VII) Not more than 10 vessels and facilities in 2002.

"(ii) RELISTING.—The relisting of a vessel or facility under section 135(d)(5)(C)(ii) shall not be considered to be an addition to the National Priorities List for purposes of this subsection.

"(B) PRIORITIZATION.—The Administrator shall prioritize the vessels and facilities added under subparagraph (A) on a national basis in accordance with the threat to human health and the environment presented by each of the vessels and facilities, respectively.

"(C) STATE CONCURRENCE.—A vessel or facility may be added to the National Priorities List under subparagraph (A) only with the concurrence of the State in which the vessel or facility is located.

"(2) SUNSET.—

"(A) NO ADDITIONAL VESSELS OR FACILITIES.—The authority of the Administrator to add vessels and facilities to the National Priorities List shall expire on December 31, 2002.

"(B) LIMITATION ON ACTION BY THE ADMINISTRATOR.—At the completion of response actions for all vessels and facilities on the National Priorities List, the authority of the Administrator under this Act shall be limited to—

"(i) providing a national emergency response capability;

"(ii) conducting research and development;

"(iii) providing technical assistance; and

"(iv) conducting oversight of grants and loans to the States.".

SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE ACTIONS.

Section 104(c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(c)(1)) is amended—

(1) in subparagraph (C) by striking "consistent with the remedial action to be taken" and inserting "not inconsistent with any remedial action that has been selected or is anticipated at the time of any removal action at a facility.";

(2) by striking "$2,000,000" and inserting "$4,000,000"; and

(3) by striking "12 months" and inserting "2 years".

SEC. 804. REMEDIATION WASTE.

(a) DEFINITIONS.—Section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903) is amended by adding at the end the following:

"(42) DEBRIS.—The term 'debris'—

"(A) means—

"(i) a solid manufactured object exceeding a 60 millimeter particle size;

"(ii) plant or animal matter; and

"(iii) natural geologic material; but

"(B) does not include material that the Administrator may exclude from the meaning of the term by regulation.

"(43) IDENTIFIED CHARACTERISTIC WASTE.—The term 'identified characteristic waste' means a solid waste that has been identified as having the characteristics of hazardous waste under section 3001.

"(44) LISTED WASTE.—The term 'listed waste' means a solid waste that has been listed as a hazardous waste under section 3001.

"(45) MEDIA.—The term 'media' means ground water, surface water, soil, and sediment.

"(46) REMEDIATION ACTIVITY.—The term 'remediation activity' means the remediation, removal, containment, or stabilization of—

"(A) solid waste that has been released to the environment; or

"(B) media and debris that are contaminated as a result of a release.

"(47) REMEDIATION WASTE.—The term 'remediation waste' means—

"(A) solid and hazardous waste that is generated by a remediation activity; and

"(B) debris and media that are generated by a remediation activity and contain a listed waste or identified characteristic waste.

"(48) STATE VOLUNTARY REMEDIATION PROGRAM.—The term 'State voluntary remediation program' means a program established by a State that permits a person to conduct remediation activity at a facility under general guidance or guidelines without being subject to a State order or consent agreement specifically applicable to the person.".

(b) IDENTIFICATION AND LISTING.—Section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921) is amended by adding at the end the following:

"(j) REMEDIATION WASTE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a person that manages remediation waste that is an identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste shall be subject to the requirements of this subtitle (including regulations issued under this subtitle, including the regulation for corrective action management units published in section 264.552, Code of Federal Regulations, and the regulation for temporary units published in section 264.553, Code of Federal Regulations, or any successor regulation).

"(2) EXCEPTIONS.—

"(A) REQUIREMENTS UNDER SECTION 3004.—Media and debris generated by a remediation activity that are identified characteristic wastes or listed wastes or that contain an identified characteristic waste or a listed waste shall not be subject to the requirements of section 3004 (d), (e), (f), (g), (j), (m), or (o).

"(B) PERMIT REQUIREMENTS.—No Federal, State, or local permit shall be required for the treatment, storage, or disposal of remediation waste that is conducted entirely at the facility at which the remediation takes place.

"(3) REMEDIATION WASTE SUBJECT TO ORDERS, CONSENT AGREEMENTS, VOLUNTARY REMEDIATION PROGRAMS, AND OTHER MECHANISMS.—

"(A) REQUIREMENTS NOT APPLICABLE.—Notwithstanding paragraph (1), a person that manages remediation waste that—

"(i) is identified characteristic waste or listed waste or that contains an identified characteristic waste or listed waste; and

"(ii) is subject to a Federal or State order, Federal or State consent agreement, a State voluntary remediation program, or such

other mechanism as the Administrator considers appropriate,

shall not be subject to the requirements of this subtitle (including any regulation under this subsection) unless the requirements are specified in the Federal or State order, Federal or State consent agreement, State voluntary cleanup program, or other mechanism, as determined by the Administrator.

"(B) ENFORCEMENT.—Unless other enforcement procedures are specified in the order, consent agreement, or other mechanism, a person described in subparagraph (A) (except a person that manages remediation waste under a State voluntary remediation program) shall be subject to enforcement of the requirements of the order, consent agreement, or other mechanism by use of enforcement procedures under section 3008.".

(c) REGULATION.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue a regulation implementing section 3001(j) of the Solid Waste Disposal Act, as added by subsection (b).

TITLE IX—FUNDING

Subtitle A—General Provisions

SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE FUND.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)) is amended in the first sentence by striking "not more than $8,500,000,000 for the 5-year period beginning on the date of enactment of the Superfund Amendments and Reauthorization Act of 1986, and not more than $5,100,000,000 for the period commencing October 1, 1991, and ending September 30, 1994" and inserting "a total of $8,500,000,000 for fiscal years 1996, 1997, 1998, 1999, and 2000".

SEC. 902. ORPHAN SHARE FUNDING.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 301(c), is amended by inserting after paragraph (8) the following:

"(9) ORPHAN SHARE FUNDING.—Payment of orphan shares under section 132.".

SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERVICES.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (m) and inserting the following:

"(m) HEALTH AUTHORITIES.—There are authorized to be appropriated from the Fund to the Secretary of Health and Human Services to be used for the purposes of carrying out the activities described in subsection (c)(4) and the activities described in section 104(i), $50,000,000 for each of fiscal years 1996, 1997, 1998, 1999, and 2000. Funds appropriated under this subsection for a fiscal year, but not obligated by the end of the fiscal year, shall be returned to the Fund.".

SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by striking subsection (n) and inserting the following:

"(n) LIMITATIONS ON RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(1) ALTERNATIVE OR INNOVATIVE TECHNOLOGIES RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAMS.—

"(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of carrying out the applied research, development, and demonstration program for alternative or innovative technologies and training program authorized under section 311(b) other than basic research.

"(B) CONTINUING AVAILABILITY.—Such amounts shall remain available until expended.

"(2) HAZARDOUS SUBSTANCE RESEARCH, DEMONSTRATION, AND TRAINING.—

"(A) LIMITATION.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000 not more than $20,000,000 of the amounts available in the Fund may be used for the purposes of section 311(a).

"(B) FURTHER LIMITATION.—No more than 10 percent of such amounts shall be used for training under section 311(a) for any fiscal year.

"(3) UNIVERSITY HAZARDOUS SUBSTANCE RESEARCH CENTERS.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than $5,000,000 of the amounts available in the Fund may be used for the purposes of section 311(d).".

SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM GENERAL REVENUES.

Section 111(p) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(p)) is amended by striking paragraph (1) and inserting the following:

"(1) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, to the Hazardous Substance Superfund—

"(i) for fiscal year 1996, $250,000,000;

"(ii) for fiscal year 1997, $250,000,000;

"(iii) for fiscal year 1998, $250,000,000;

"(iv) for fiscal year 1999, $250,000,000; and

"(v) for fiscal year 2000, $250,000,000.

"(B) ADDITIONAL AMOUNTS.—There is authorized to be appropriated to the Hazardous Substance Superfund for each such fiscal year an amount, in addition to the amount authorized by subparagraph (A), equal to so much of the aggregate amount authorized to be appropriated under this subsection and section 9507(b) of the Internal Revenue Code of 1986 as has not been appropriated before the beginning of the fiscal year.".

SEC. 906. ADDITIONAL LIMITATIONS.

Section 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611) is amended by adding at the end the following:

"(q) QUALIFYING STATE VOLUNTARY RESPONSE PROGRAM.—For each of fiscal years 1996, 1997, 1998, 1999, and 2000, not more than $25,000,000 of the amounts available in the Fund may be used for the purposes of subsection (a)(7) (relating to qualifying State voluntary response programs).

"(r) BROWNFIELD CLEANUP ASSISTANCE.—For each of fiscal years 1996 through 2000, not more than $15,000,000 of the amounts available in the Fund may be used to carry out section 134(b).

"(s) COMMUNITY RESPONSE ORGANIZATION.—For the period commencing October 1, 1995, and ending September 30, 2000, not more than $15,000,000 of the amounts available in the Fund may be used to make grants under section 117(f) (relating to Community Response Organizations).

"(t) RECOVERIES.—Effective beginning October 1, 1995, any response cost recoveries collected by the United States under this Act shall be credited as offsetting collections to the Superfund appropriations account.".

SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.

Section 111(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9611(a)), as amended by section 902, is amended by inserting after paragraph (9) the following:

"(10) REIMBURSEMENT OF POTENTIALLY RESPONSIBLE PARTIES.—If—

"(A) a potentially responsible party and the Administrator enter into a settlement under this Act under which the Administrator is reimbursed for the response costs of the Administrator; and

"(B) the Administrator determines, through a Federal audit of response costs, that the costs for which the Administrator is reimbursed—

"(i) are unallowable due to contractor fraud;

"(ii) are unallowable under the Federal Acquisition Regulation; or

"(iii) should be adjusted due to routine contract and Environmental Protection Agency response cost audit procedures,

a potentially responsible party may be reimbursed for those costs.".

NOTICE OF HEARINGS

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Mr. STEVENS. Mr. President, I would like to announce for the information of the Senate and the public that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, will hold hearings regarding the global proliferation of weapons of mass destruction, part II.

This hearing will take place on Friday, March 22, 1996 in room 342 of the Dirksen Senate Office Building. For further information, please contact Daniel S. Gelber of the Subcommittee staff at 224-9157.

SPECIAL COMMITTEE ON AGING

Mr. COHEN. Mr. President, I wish to announce that the Special Committee on Aging will hold a hearing on Thursday, March 28, 1996, at 9:30 a.m., in room 562 of the Dirksen Senate Office Building. The hearing will discuss adverse drug reactions and the effects on the elderly.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 10 a.m. on Thursday, March 21, 1996, in open session, to receive testimony from the unified commanders on their military strategies, operational requirements, and the defense authorization request for fiscal year 1997 and the future years defense programs.

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

COMMITTEE ON ARMED SERVICES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, March 21, 1996 to receive testimony on Department of the Navy shipbuilding programs in review of the defense authorization request for fiscal year 1997 and the future years defense program.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. GORTON. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, March 21, at 9:00 a.m. for a hearing on the Tenth Amendment Enforcement Act of 1996.

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 hold a business meeting during the session of the Senate on Thursday, March 21, 1996 at 10:00 a.m. in SH216.

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to hold a meeting during the session of the Senate on Thursday, March 21, 1996. The committee will be in executive session at 9:00 a.m. on S. 1578, The Individuals With Disabilities in Education Act [IDEA].

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

COMMITTEE ON SMALL BUSINESS

Mr. GORTON. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate for a hearing on Thursday, March 21, 1996, at 10:30 a.m., in room 428A of the Russell Senate Office Building, to conduct a hearing focusing on "S. 1574, the HUBZones Act of 1996—Revitalizing Inner Cities and Rural America."

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 Thursday, March 21, 1996, at 2 p.m. to hold a closed briefing for members on intelligence matters.

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

SUBCOMMITTEE ON OVERSIGHT AND STRUCTURE

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on HUD Oversight and Structure, of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, March 21, 1996, to conduct a hearing on the 1992 Federal Housing Enterprises Safety and Soundness Act as it affects Fannie Mae and Freddie Mac.

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

SUBCOMMITTEE ON PARKS, HISTORIC PRESERVATION, AND RECREATION

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Parks, Historic Preservation, and Recreation of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, March 21, 1996, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to review S. 305, a bill to establish the Shenandoah Valley National Battlefields and Commission in the Commonwealth of Virginia; H.R. 1091, a bill to improve the National Park System in the Commonwealth of Virginia; S. 1225, a bill to require the Secretary of the Interior to conduct an inventory of historic sites, buildings, and artifacts in the Champlain Valley and the upper Hudson River Valley; S. 1226, a bill to require the Secretary of the Interior to prepare a study of battlefields of the Revolutionary War and the War of 1812, to establish an American Battlefield Protection Program; and S.J. Res. 42, a joint resolution designating the Civil War Center at Louisiana State University as the U.S. Civil War Center, making the center the flagship institution for planning the sesquicentennial commemoration of the Civil War.

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

SUBCOMMITTEE ON READINESS

Mr. GORTON. Mr. President, I ask unanimous consent that the Subcommittee on Readiness of the Committee on Armed Services be authorized to meet at 2:30 p.m. on Thursday, March 21, 1996, in open session, to receive testimony on the readiness of the Guard and Reserve to support the national military strategy.

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

ADDITIONAL STATEMENTS

CORPORATE SUBSIDY REVIEW, REFORM AND TERMINATION COMMISSION

• Mr. McCAIN. Mr. President, last year, I introduced bipartisan legislation to establish a Corporate Subsidy Review, Reform, and Termination Commission.

The proposed eight-member panel, styled after the military base closing commission would review Federal programs as well as provisions of the U.S. Tax Code to identify those that unduly subsidize specific profit-making companies, select industries, or segments of an industry in a manner that is unfair or anticompetitive and has no compelling public benefit. The Commission would recommend to Congress specific reforms and or termination of such subsidies, and Congress would consider the package under limited procedures spelled out in the legislation.

The establishment of such a Commission, though an inferior alternative to Congress taking action directly, has become necessary because Congress does not appear willing or able to eliminate or significantly reform corporate subsidies.

In these times of budget austerity, we are asking millions of Americans—from families who receive food stamps to our men and women in uniform—to sacrifice in order to stop the Nation's fiscal bleeding. As a matter of simple fairness, we have a moral obligation to ensure that corporate interests share the burden.

The Cato and Progressive Policy Institutes, have identified 125 Federal programs that subsidize industry to the tune of $85 billion every year, and PPI found an additional $30 billion in tax loopholes to powerful industries.

Mr. President, I want to make clear, I am sure there are a number of programs which could be classified as a corporate subsidy which may serve a public interest. And, every Senator in this Chamber, including this Senator, have supported at one time or another a variety of these programs.

So, no one is pure or innocent on the question of corporate subsidies. But, blame is not the issue, that's only an oft-used diversion. The issue is what is required of us today to reduce the debt that grown larger every day, eating up a greater percentage of the budget in debt service and submerging the prospects of our children as they are required to spend an evergrowing portion of their life to pay our bills.

Under such circumstances, we are compelled to take a harder, more judicious, look at corporate subsidies and eliminate those that are not justified and do not have a compelling public interest.

As the Public Policy Institute observed,

> The President and Congress can break the current impasse and substantially reduce both spending and projected deficits * * * if they are willing to eliminate or reform scores of special spending programs and tax provisions narrowly targeted to subsidize influential industries.

Let me conclude, Mr. President, by acknowledging that I do not really like the idea of commissions. In some instances reasonable and well-intentioned people may disagree on what is pork as opposed to a necessary and vital program. But in many instances we know what can and should be eliminated. The reality, however, is that Members will simply not gore their own ox, unless others are forced to do the same. As with military base closures—the mentality is—we either all go together or we do not go at all. Perhaps that is the only fair way to do it.

An independent corporate pork commission with privileged and expedited procedures to ensure congressional action would help us even better define what is an unnecessary and unwarranted corporate subsidy, and it will help us depoliticize the process, guarantee that the pain is shared, and

might be the only realistic means of achieving the meaningful reform that the public and our dire fiscal circumstances demand.

I look forward to working with my colleagues to refine a commission and congressional consideration process that is fair, targeted, and appropriate.•

TRIBUTE TO CF INDUSTRIES, INC.

• Mr. BREAUX. Mr. President, I rise today along with my colleagues: Mr. GRAHAM and Mr. MACK of Florida, Mr. SIMON and Mrs. MOSELEY-BRAUN of Illinois, and Mr. JOHNSTON of Louisiana, to pay tribute to CF Industries, Inc., which is celebrating its 50th anniversary this year. CF is an interregional farm supply cooperative owned by 11 regional cooperatives in the United States and Canada. CF's nitrogen, phosphate, and potash products reach over 1 million farmer-owners who depend on the CF system to manufacture and distribute agricultural fertilizers to them. We would like to congratulate CF and its employees on the high-quality products and services they have provided to the Nation's farmers over the past 50 years and their commitment to sound environmental, health, and safety practices.

Established in 1946 as Central Farmers Fertilizer Co., CF began as a broker for sales of fertilizer products to farmer-members with the goal of becoming the Nation's major fertilizer supplier for the agricultural cooperative community. Through 1960, CF evolved from a broker to a manufacturer and distributor of fertilizer products.

Today, CF has become more than the founding members have ever envisioned. CF manufacturing plants include nitrogen fertilizer complexes in Donaldsonville, LA, and Medicine Hat, AB, Canada, as well as extensive phosphate mining and manufacturing facilities in Florida. CF plants have the capacity to produce more than 8 million tons of fertilizer products annually. In 1995, CF sales totaled over $1.3 billion.

Products are distributed to farmer-members in 46 States and two Canadian provinces through an extensive system. CF has ownership and lease positions in 63 regional terminals and warehouses. Total storage capacity of CF distribution terminals and warehouses is in excess of 2.4 million tons of product.

In closing, Mr. President, we want to express our good wishes to CF Industries, Inc., and its employees as they continue to respond to the needs of the cooperative community and look to providing high-quality products and services into the 21st century.•

THE 100TH ANNIVERSARY OF ST. PAUL'S EVANGELICAL LUTHERAN CHURCH

• Mr. ABRAHAM. Mr. President, I rise today to congratulate St. Paul's Evangelical Lutheran Church of Northville, MI, on their 100th anniversary. Just over 100 years ago, a group of German speaking residents began meeting on Sunday mornings, forming what was to become the Evangelical Lutheran Church of the Reformation of Northville. On August 30, 1896, the congregation celebrated Holy Communion for the first time.

Remembering the verse in Proverbs, "The fear of the Lord is the beginning of wisdom," the congregation started a Christian Day School in September with seven children attending the first semester. Less than 1 year later, St. Paul's church purchased the deed to property on Elm Street. The church still resides at that location.

On November 28, 1948, ground was broken for the new church building. Dedicated in February 1950, the Gothic building contained three beautiful stained glass windows located above the altar symbolizing the Holy Trinity. Other windows throughout the nave tell the story of Christ's apostles.

Since 1896, the congregation at St. Paul's has met faithfully on Sunday mornings. The Day School continues to serve families of St. Paul's and the Northville community.

Again, congratulations to this community. I wish it many more years of fellowship and worship.•

ICI EXPORT LTD.

• Mr. DODD. Mr. President, it has come to my attention that ICI Export Ltd. was erroneously listed among the "Corporations and companies cited in the international media as having commercial activities with the Republic of Cuba" in the CONGRESSIONAL RECORD of March 5, 1996. ICI Export Ltd., which is in no way affiliated with ICI Americas, Inc., has not existed since 1992. I ask that the attached letter from William A. Meaux of ICI Americas, Inc. be printed in the RECORD.

The letter follows:

ICI AMERICAS INC.,
Washington, DC, March 12, 1996.

Hon. CHRISTOPHER DODD,
Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR SENATOR DODD: Thank you very much for your offer to correct the erroneous listing of ICI Export Ltd. in the Congressional Record of March 5, 1996, on page S 1490. The listing of ICI Export Ltd. by the U.S.-Cuba Trade and Economic Council, Inc. is in error. ICI Export does not exist, has not existed since 1992, and is not affiliated with any company in the ICI group. After 1992, it is our understanding that ICI Export Ltd. became Zeneca International Ltd. located at 10 Stanhope Gate in London, England. Zeneca International Ltd. is not affiliated with, does not own, and is not owned by, ICI Americas or any other ICI company. We are very grateful for your offer to correct this inaccuracy in the RECORD.

Sincerely,

WILLIAM A. MEAUX.•

RECOGNIZING ILLINOIS WESLEYAN UNIVERSITY

• Mr. SIMON. Mr. President, the Illinois Wesleyan University Titans Men's Basketball Team recently placed third in the Nation among NCAA Division III schools. The Titans head coach, Denny Bridges, has been with the team for 31 years. He is one of the winningest coaches in Division III basketball. The university ought to be proud of its coach and players.

We should also recognize the quality education that the school offers. Illinois Wesleyan was recently ranked by U.S. News and World Report in the top 5 among Liberal Arts universities in the United States.

I commend the university and its basketball team. They deserve our accolades.•

THE 75TH ANNIVERSARY OF THE JACKSON LIONS HOST CLUB

• Mr. ABRAHAM. Mr. President, I rise today to congratulate the 75th anniversary of the Jackson Lions Host Club. For 75 years, members of this outstanding organization have been providing care and assistance to the handicapped and less fortunate as well as contributing both physical and monetary resources toward a brighter future.

In 1921 at the International Host Lions Club Convention, Helen Keller challenged the delegates to dedicate their charitable outreach to the blind. The Jackson club has been generously meeting this challenge, furnishing free Leader Dogs, promoting the enactment of the White Cane Law, and supporting numerous other civic projects and local charities.

Once again, I would like to congratulate this organization and to encourage the spirit of giving that its members have demonstrated in so many ways.•

COMMENDING THE ANTI-DEFAMATION LEAGUE FOR THEIR EFFORTS TO COMBAT HATE CRIMES

• Mr. SIMON. Mr. President, I applaud the Anti-Defamation League [ADL] for its continuing work to expose and combat hate crimes, and to bring your attention to its most recent "Audit of Anti-Semitic Incidents." For the past 17 years, the ADL has compiled data about anti-Jewish attacks. Their efforts in the collection of data and the development of programs regarding anti-Semitic acts increase public awareness of this problem, and help generate constructive solutions. I commend ADL for continuing this important endeavor and would like to share with you some of their recent findings.

In 1995, the total number of anti-Semitic incidents reported to the Anti-Defamation League—including acts against property and persons—was

1,843. I am pleased to report that this total represents a decrease of 223 incidents, or 11 percent, from the 1994 total of 2,066. This is the largest decline in 10 years. Unfortunately, the decline is contrasted with the seriousness of many of the incidents reported. For the fifth straight year in a row, acts of anti-Semitic harassment against individuals outnumber incidents of vandalism against institutions and other property. In 1995, the 1,116 incidents of harassment account for 61 percent of all incidents, compared to 727 accounts of vandalism. Fortunately, the 1,116 incidents of harassment, threats, and assaults represents a decrease of 81, or 7 percent from the 1994 total of 1,197, which was the highest on record. Although it is encouraging to see the number of harassments down from previous years, I am troubled that incidents of harassment remain one of the dominant forms of anti-Semitic activity.

Although the ADL audit provides useful statistics about anti-Semitism generally, it is particularly revealing to consider specific incidents. One particularly violent incident occurred in Cincinnati, OH, when a group of four youths assaulted the son of a community rabbi, chasing him for about a block before they caught him outside of the synagogue and beat him until he collapsed on the street. The ADL also reported an incident of arson in New York City, at Freddy's Fashion Mart, where eight people, including the arsonist himself, died. At Fresno State College, following the assassination of Israeli Prime Minister Yitzhak Rabin, the student-run newspaper printed an article calling Rabin, "The most despicable mass murderer the 20th century has seen, making Hitler look like Big Bird."

Sadly, 1995 saw a large number of anti-Semitic incidences on college campuses. One disturbing incident occurred at the University of Pennsylvania. On March 24, two students were walking in an area immediately off campus. Derogatory epithets were shouted at them by two students sitting on the porch of a private home. When the Jewish students confronted them, one of the two went into the house and returned brandishing a shotgun which he used to threaten the Jewish students, who quickly fled the scene.

On another somber note, the number of arrests made in conjunction with anti-Semitic hate crimes was 108, a significant decrease of 33 from last year's arrest total of 141. This may be attributed to either fewer crimes or underreporting of crime instances. However, the number of arrests is still relatively high, which is encouraging. Law enforcement agencies have been making intensive efforts to refine procedures for investigation of hate crimes, with the assistance of the ADL and other human relations organizations.

In closing, I again want to commend the ADL for its outstanding and important work and ask that portions of the ADL report be printed in the RECORD.

The material follows:

AUDIT OF ANTI-SEMITIC INCIDENTS—1995

THE FINDINGS

In 1995, the total number of anti-Semitic incidents reported to the Anti-Defamation League—including acts against both property and persons—was 1,843. This total, comprising reports from 42 states and the District of Columbia, represents a decrease of 223 incidents, or 11 percent, from the 1994 total of 2,066.

The four states reporting the highest totals of anti-Semitic incidents of all kinds in 1995 were: New York (370), California (264), New Jersey (228), and Florida (152). These four states account for 1,014 of the 1,843 incidents reported (55 percent).

The 1995 audit reveals the following new developments:

(1) The decline in violent crime in the U.S. that has been reported by Federal and municipal law enforcement in 1995 carries over into anti-Semitic bias incidents as well. The overall 11 percent decline reflected in this year's Audit is the first since 1992, and the largest decline in 10 years. Thus, the Audit statistics mirror the state of crime in American society. Enhanced security awareness by Jewish institutions, steadily improving law enforcement action, and passage of hate crimes legislation have likely contributed to this decline.

(2) The decline is contrasted with the seriousness of many of the incidents reported. An extremely violent arson incident in New York City led to several deaths. In addition, the number of cemetery desecrations (one of the most serious and hurtful forms of vandalism, which affects an entire community) actually increased over 1994.

(3) The number of incidents occurring on the college campus shows the first decline since 1987, and only the second since the Audit began separately counting such incidents in 1984. In 1995, 118 campus incidents occurred, a decrease of 25 (17 percent) from the 1994 total of 143.

In addition to the aforementioned findings, the 1995 figures maintain two important trends noted in the 1994 ADL study:

(1) For the fifth straight year, acts of anti-Semitic harassment outnumber incidents of vandalism. In 1995, the 1,116 incidents of harassment account for 61 percent of all incidents, vs. 727 incidents of vandalism. The number of harassments and assaults in 1995 dropped by 81, or 7 percent, from 1994.

(2) As in previous years, of the total of 727 incidents of vandalism, the number of vandalism incidents committed against public properly locations (362)—i.e., public school buildings, bridges, and sign posts—in 1995 was more than twice that committed against synagogues and other Jewish institutional targets (145). (The remaining 220 vandalism incidents were perpetrated against privately owned property.) This pattern continues a trend seen over the previous five years. Vandals, it seems, are still opting for the more numerous and harder-to-protect public locations rather than the generally better secured and increasingly more aware Jewish institutions. In recent years, such institutions have also become better protected by more intensive law enforcement action.

FEWER INCIDENTS—BUT MANY STILL VERY SERIOUS

In contrast to the overall decline in incidents reported in 1995, there were several particularly troubling incidents which took place over the last year.

On November 11, 1995, the FBI arrested four suspects in a foiled attempt to bomb several offices of civil rights organizations around the country, including ADL Regional Offices. Willie Ray Lampley, Cecilia Lampley, Larry Wayne Crow, and John Dare Baird had been allegedly conspiring since August 1995 to build homemade bombs out of ammonium nitrate, fuel oil, and other ingredients to destroy the ADL Houston office, a second unnamed ADL office, the Southern Poverty Law Center in Montgomery, Alabama, and two other targets to be decided by the "Tri-State Militia."

The FBI became aware of the plans on a tip from local law enforcement sources in South Dakota, and closely monitored the development plot through the use of undercover informants and surveillance. All of the suspects were arrested without incident, and indicted on Federal charges.

On December 8th, Roland Smith entered Freddy's Fashion Mart on Harlem's historic 125th Street in New York City. According to the New York Times (Dec. 9, 10), he then produced a revolver and yelled "It's on now!" and ordered all blacks to leave the store. After this he began to fire the gun, and to spread a flammable liquid over the racks of clothing in the store, before igniting them. When the fire department had finally extinguished the flames, 8 people were dead, including Smith. An additional 4 people were wounded.

Fred Harari, the Jewish owner of Freddy's, was involved in a landlord-tenant dispute with Sikhulu Shange, the black owner of the Record Shack, a store subletting an adjacent property. (The entire property was actually owned by the United House of Prayer for All People, a Black church). Mr. Shange enlisted the support of the 125th Street Vendors Association, which organized demonstrations outside of Freddy's. Though it started as a simple economic dispute, the demonstrators quickly began to characterize it in terms of a white Jewish-owned business trying to force a black business off 125th Street. In late November, Mr. Harari complained that the demonstrations, which was supported by community newspapers and radio stations, were taking an anti-Semitic tone, and were laced with increasingly violent racist rhetoric.

On Saturday, February 18, members of the Ohev Shalom Synagogue in York, PA, arrived for services to find a severed pig's head mounted on the front door. The community quickly rallied behind the efforts of law enforcement officials to apprehend the perpetrator, and support the synagogue. At a vote on a motion to condemn the incident, town supervisor Lori Mitrick states that the Jewish community should know "this is not just an embarrassment to them, it is an embarrassment to all decent human beings."

Determined police work led to the eventual arrest and conviction of 22-year-old Mason E. Aldrich for institutional vandalism, desecration of venerated objects, and criminal conspiracy. He was sentenced to 23 months in jail and ordered to perform 120 hours of community service, including 15 hours of cultural awareness programming with ADL.

In interviews leading up to his October 16 Million Man March, the Nation of Islam leader Louis Farrakhan sought to justify his referring to Jews and others as "blood suckers." On Reuters Television, Farrakhan explained, "Many of the Jews who owned the homes, the apartments in the black community, we considered them bloodsuckers because they took from our community but

didn't offer anything back to our community." Minister Farrakhan was interviewed by many national news programs in the weeks leading up to the march, interspersing many of his remarks with thinly veiled conspiracy theory anti-Semitism.

In addition to the above incidents, other troubling acts included the beating of a rabbi's son in Cincinnati, OH, and the intimidation of the cast of a play about the Holocaust in Honolulu, HI. At the University of Pennsylvania, two Jewish students were threatened by other students brandishing a shotgun, after being taunted with anti-Semitic epithets. In California, a home-made fire-bomb was thrown at a synagogue. The bomb did not detonate, and the synagogue was spared. (Please see Examples of Harassment, Threats and Assaults, p. 4; Campus Incidents, p. 9; and A Look at Some Noteworthy Incidents, p. 13, for more information.)

HARASSMENT, THREATS, AND ASSAULTS

In 1995, the number of incidents of anti-Semitic harassment, threats, and assaults directed at Jewish individuals and institutions totaled 1,116. This total represents a decrease of 81, or 7 percent from the 1994 total of 1,197, which was the highest on record.

This category of incidents covers a large variety of intimidating and hostile acts, including: slanderous anti-Semitic and neo-Nazi hate literature mailed or disseminated in public places; slurs directed against Jewish individuals walking to synagogue services or campus gatherings; speeches given on campus containing anti-Semitic language; Holocaust-denial advertisements in campus newspapers; a threatening phone call to a synagogue or Jewish school; as well as direct physical violence against Jewish persons as a result of their identity. Although many incidents of harassment are not crimes, they continue to constitute overt and painful expressions of anti-Semitic hatred.

While it is encouraging that the number of harassments is down from previous years, a troubling trend has been maintained in the 1995 totals. As in past years, incidents of harassment are significantly more common than incidents of vandalism. While any expression of anti-Semitic behavior is troubling, the high number of these more personalized attacks is a cause for particular concern.

EXAMPLES OF HARASSMENT, THREAT, AND ASSAULT INCIDENTS

The following is a representative sampling of 1995 incidents of anti-Semitic harassment, threats, and assaults in the 20 states reporting the highest totals of such acts.

1. New York (200 incidents) March—Upon leaving a dance club late at night, a group of men was approached by several people who asked if they were Jewish. When they responded that they were, one of them was beaten with a "Club" anti-car-theft device. (New York City)

2. California (175) August—A car with four young men in it drove past a group of campers and staff at a JCC camp and shouted profanities and anti-Semitic epithets. (San Diego)

3. Florida (102) October—Police officers and social workers received messages on their beepers leading them to call the Children of the Reich hate line, with a message threatening Jews and African-Americans.

4. New Jersey (97) January/February—Community leaders were threatened with bodily harm if they supported an application to erect a new synagogue building. (Closter)

5. Connecticut (51) February—An anti-Semitic, Holocaust-denying letter was sent to a Jewish newspaper. (Hartford)

6. Ohio (50) November—Soon after the assassination of Israeli Prime Minister Yitzhak Rabin, a spectator at a Cleveland Browns football game held a sign saying, "They killed the wrong Jew," a reference to Art Modell, the owner of the team who decided to move it to Baltimore. (Cleveland)

7. Massachusetts (47) June—A 74-year-old Russian immigrant was assaulted by his neighbor, who yelled, "F_ _ _ing Jew—go back to Russia." (Brighton)

8. Maryland (44) May—A Holocaust information center received numerous anti-Semitic phone calls after its phone number was posted on the Internet. (Baltimore)

9. Illinois (40) August—A man was walking on a downtown street wearing a sandwich board sign which read, "HIROSHIMA + NAGASAKI Were (and are) JEWISH ATROCITIES." (Chicago)

10. Pennsylvania (36) April—A synagogue nursery school received a letter which stated, "Fuel oil fertilizer. Jews go boom." (Western Pennsylvania)

11. Missouri (31) March—The Aryan Revolutionary Army passed out flyers stating that the "only good Jew is a dead Jew." (St. Louis)

12. Georgia (27) April—A high school history teacher asserted in class that the Jews control the media and film industry. (Atlanta)

13. District of Columbia (21)—A U.S. Congressman received anti-Semitic hate mail including, "How is it that a Jew backs a Nazi?" and "You Jews cause trouble all around the world and then try to hide behind your religion," and imagery such as swastikas and other offensive drawings.

14. Minnesota (20) February—The National Socialist American Workers Freedom Movement, a neo-Nazi group, distributed flyers questioning the Holocaust and filled with virulently anti-Semitic statements. (Minneapolis)

15. Texas (20) February—A 15-year-old Jewish student was assaulted by a gang of 15 skinheads. He escaped without serious injury. (Alamo Heights)

16. Colorado (16) October—A threatening message was left on the voice mail of the ADL Regional Office, stating, "Hello, is this the rabbi? F_ _ _ you. Six million more, hey six zillion more!" (Denver)

17. Wisconsin (16) April—A letter addressed to the Executive Director of the Jewish Council said "Death to all jews [sic]. Six million more!!! May you be next!!!" (Milwaukee)

18. Washington (13) April—A package of dog feces was left on the front porch of a Jewish family, with the message, "Happy Passover from Congregation Beth Shalom."

19. North Carolina (11) January—Skinhead hate literature was distributed at a flea market by Gary Lauck's National Socialist German Workers Party. (Fayetteville)

20. Virginia (11) January—Anti-Semitic hate literature from the National Alliance was left in people's driveways. (Henrico County) •

COMPREHENSIVE TERRORISM PREVENTION ACT

Mr. COATS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 735, a bill to prevent and punish acts of terrorism, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 735) entitled "An Act to prevent and punish acts of terrorism, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause, and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Effective Death Penalty and Public Safety Act of 1996".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CRIMINAL ACTS

Sec. 101. Protection of Federal employees.
Sec. 102. Prohibiting material support to terrorist organizations.
Sec. 103. Modification of material support provision.
Sec. 104. Acts of terrorism transcending national boundaries.
Sec. 105. Conspiracy to harm people and property overseas.
Sec. 106. Clarification and extension of criminal jurisdiction over certain terrorism offenses overseas.
Sec. 107. Expansion and modification of weapons of mass destruction statute.
Sec. 108. Addition of offenses to the money laundering statute.
Sec. 109. Expansion of Federal jurisdiction over bomb threats.
Sec. 110. Clarification of maritime violence jurisdiction.
Sec. 111. Possession of stolen explosives prohibited.
Sec. 112. Study and recommendations for assessing and reducing the threat to law enforcement officers from the criminal use of firearms and ammunition.

TITLE II—INCREASED PENALTIES

Sec. 201. Mandatory minimum for certain explosives offenses.
Sec. 202. Increased penalty for explosive conspiracies.
Sec. 203. Increased and alternate conspiracy penalties for terrorism offenses.
Sec. 204. Mandatory penalty for transferring a firearm knowing that it will be used to commit a crime of violence.
Sec. 205. Mandatory penalty for transferring an explosive material knowing that it will be used to commit a crime of violence.
Sec. 206. Directions to Sentencing Commission.
Sec. 207. Amendment of sentencing guidelines to provide for enhanced penalties for a defendant who commits a crime while in possession of a firearm with a laser sighting device.

TITLE III—INVESTIGATIVE TOOLS

Sec. 301. Study of tagging explosive materials, detection of explosives and explosive materials, rendering explosive components inert, and imposing controls of precursors of explosives.
Sec. 302. Exclusion of certain types of information from wiretap-related definitions.
Sec. 303. Requirement to preserve record evidence.
Sec. 304. Detention hearing.
Sec. 305. Protection of Federal Government buildings in the District of Columbia.
Sec. 306. Study of thefts from armories; report to the Congress.

TITLE IV—NUCLEAR MATERIALS

Sec. 401. Expansion of nuclear materials prohibitions.

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

Sec. 501. Definitions.
Sec. 502. Requirement of detection agents for plastic explosives.
Sec. 503. Criminal sanctions.
Sec. 504. Exceptions.
Sec. 505. Effective date.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

Sec. 601. Funding for detention and removal of alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

Sec. 611. Denial of asylum to alien terrorists.
Sec. 612. Denial of other relief for alien terrorists.

Subtitle B—Expedited Exclusion

Sec. 621. Inspection and exclusion by immigration officers.
Sec. 622. Judicial review.
Sec. 623. Exclusion of aliens who have not been inspected and admitted.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

Sec. 631. Access to certain confidential INS files through court order.
Sec. 632. Waiver authority concerning notice of denial of application for visas.

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

Sec. 641. Criminal forfeiture for passport and visa related offenses.
Sec. 642. Subpoenas for bank records.
Sec. 643. Effective date.

Subtitle D—Employee Verification by Security Services Companies

Sec. 651. Permitting security services companies to request additional documentation.

Subtitle E—Criminal Alien Deportation Improvements

Sec. 661. Short title.
Sec. 662. Additional expansion of definition of aggravated felony.
Sec. 663. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 664. Restricting the defense to exclusion based on 7 years permanent residence for certain criminal aliens.
Sec. 665. Limitation on collateral attacks on underlying deportation order.
Sec. 666. Criminal alien identification system.
Sec. 667. Establishing certain alien smuggling-related crimes as RICO-predicate offenses.
Sec. 668. Authority for alien smuggling investigations.
Sec. 669. Expansion of criteria for deportation for crimes of moral turpitude.
Sec. 670. Miscellaneous provisions.
Sec. 671. Construction of expedited deportation requirements.
Sec. 672. Study of prisoner transfer treaty with Mexico.
Sec. 673. Justice Department assistance in bringing to justice aliens who flee prosecution for crimes in the United States.
Sec. 674. Prisoner transfer treaties.
Sec. 675. Interior repatriation program.
Sec. 676. Deportation of nonviolent offenders prior to completion of sentence of imprisonment.
Sec. 677. Authorizing state and local law enforcement officials to arrest and detain certain illegal aliens.

TITLE VII—AUTHORIZATION AND FUNDING

Sec. 701. Firefighter and emergency services training.
Sec. 702. Assistance to foreign countries to procure explosive detection devices and other counter-terrorism technology.
Sec. 703. Research and development to support counter-terrorism technologies.
Sec. 704. Sense of Congress.

TITLE VIII—MISCELLANEOUS

Sec. 801. Study of State licensing requirements for the purchase and use of high explosives.
Sec. 802. Compensation of victims of terrorism.
Sec. 803. Jurisdiction for lawsuits against terrorist states.
Sec. 804. Study of publicly available instructional material on the making of bombs, destructive devices, and weapons of mass destruction.
Sec. 805. Compilation of statistics relating to intimidation of Government employees.
Sec. 806. Victim Restitution Act of 1995.
Sec. 807. Overseas law enforcement training activities.
Sec. 808. Closed circuit televised court proceedings for victims of crime.
Sec. 809. Authorization of appropriations.

TITLE IX—HABEAS CORPUS REFORM

Sec. 901. Filing deadlines.
Sec. 902. Appeal.
Sec. 903. Amendment of Federal rules of appellate procedure.
Sec. 904. Section 2254 amendments.
Sec. 905. Section 2255 amendments.
Sec. 906. Limits on second or successive applications.
Sec. 907. Death penalty litigation procedures.
Sec. 908. Technical amendment.
Sec. 909. Severability.

TITLE X—INTERNATIONAL COUNTERFEITING

Sec. 1001. Short title.
Sec. 1002. Audits of international counterfeiting of United States currency.
Sec. 1003. Law enforcement and sentencing provisions relating to international counterfeiting of United States currency.

TITLE XI—BIOLOGICAL WEAPONS RESTRICTIONS

Sec. 1101. Short title.
Sec. 1102. Attempts to acquire under false pretenses.
Sec. 1103. Inclusion of recombinant molecules.
Sec. 1104. Definitions.
Sec. 1105. Threatening use of certain weapons.
Sec. 1106. Inclusions of recombinant molecules and biological organisms in definition.

TITLE XII—COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

Sec. 1201. Establishment.
Sec. 1202. Duties.
Sec. 1203. Membership and administrative provisions.
Sec. 1204. Staffing and support functions.
Sec. 1205. Powers.
Sec. 1206. Report.
Sec. 1207. Termination.

TITLE XIII—REPRESENTATION FEES

Sec. 1301. Representation fees in criminal cases.

TITLE XIV—DEATH PENALTY AGGRAVATING FACTOR

Sec. 1401. Death penalty aggravating factor.

TITLE XV—FINANCIAL TRANSACTIONS WITH TERRORISTS

Sec. 1501. Financial transactions with terrorists.

TITLE I—CRIMINAL ACTS

SEC. 101. PROTECTION OF FEDERAL EMPLOYEES.

(a) HOMICIDE.—Section 1114 of title 18, United States Code, is amended to read as follows:

"§1114. Protection of officers and employees of the United States

"Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished, in the case of murder, as provided under section 1111, or in the case of manslaughter, as provided under section 1112, or, in the case of attempted murder or manslaughter, as provided in section 1113.".

(b) THREATS AGAINST FORMER OFFICERS AND EMPLOYEES.—Section 115(a)(2) of title 18, United States Code, is amended by inserting ", or threatens to assault, kidnap, or murder, any person who formerly served as a person designated in paragraph (1), or" after "assaults, kidnaps, or murders, or attempts to kidnap or murder".

SEC. 102. PROHIBITING MATERIAL SUPPORT TO TERRORIST ORGANIZATIONS.

(a) IN GENERAL.—That chapter 113B of title 18, United States Code, that relates to terrorism is amended by adding at the end the following:

"§2339B. Providing material support to terrorist organizations

"(a) OFFENSE.—Whoever, within the United States, knowingly provides material support or resources in or affecting interstate or foreign commerce, to any organization which the person knows is a terrorist organization that has been designated under section 212(a)(3)(B)(iv) of the Immigration and Nationality Act as a terrorist organization shall be fined under this title or imprisoned not more than 10 years, or both.

"(b) DEFINITION.—As used in this section, the term 'material support or resources' has the meaning given that term in section 2339A of this title.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113B of title 18, United States Code, is amended by adding at the end the following new item:

"2339B. Providing material support to terrorist organizations.".

SEC. 103. MODIFICATION OF MATERIAL SUPPORT PROVISION.

Section 2339A of title 18, United States Code, is amended read as follows:

"§2339A. Providing material support to terrorists

"(a) OFFENSE.—Whoever, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for or in carrying out, a violation of section 32, 37, 81, 175, 351, 831, 842 (m) or (n), 844 (f) or (i), 956, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, or 2340A of this title or section 46502 of title 49, or in preparation for or in carrying out the concealment or an escape from the commission of any such violation, shall be fined under this title, imprisoned not more than 10 years, or both.

"(b) DEFINITION.—In this section, the term 'material support or resources' means currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other

physical assets, except medicine or religious materials.".

SEC. 104. ACTS OF TERRORISM TRANSCENDING NATIONAL BOUNDARIES.

(a) OFFENSE.—Title 18, United States Code, is amended by inserting after section 2332a the following:

"§2332b. Acts of terrorism transcending national boundaries

"(a) PROHIBITED ACTS.—

"(1) Whoever, involving any conduct transcending national boundaries and in a circumstance described in subsection (b)—

"(A) kills, kidnaps, maims, commits an assault resulting in serious bodily injury, or assaults with a dangerous weapon any individual within the United States; or

"(B) creates a substantial risk of serious bodily injury to any other person by destroying or damaging any structure, conveyance, or other real or personal property within the United States or by attempting or conspiring to destroy or damage any structure, conveyance, or other real or personal property within the United States;

in violation of the laws of any State or the United States shall be punished as prescribed in subsection (c).

"(2) Whoever threatens to commit an offense under paragraph (1), or attempts or conspires to do so, shall be punished as prescribed in subsection (c).

"(b) JURISDICTIONAL BASES.—The circumstances referred to in subsection (a) are—

"(1) any of the offenders travels in, or uses the mail or any facility of, interstate or foreign commerce in furtherance of the offense or to escape apprehension after the commission of the offense;

"(2) the offense obstructs, delays, or affects interstate or foreign commerce, or would have so obstructed, delayed, or affected interstate or foreign commerce if the offense had been consummated;

"(3) the victim, or intended victim, is the United States Government, a member of the uniformed services, or any official, officer, employee, or agent of the legislative, executive, or judicial branches, or of any department or agency, of the United States;

"(4) the structure, conveyance, or other real or personal property is, in whole or in part, owned, possessed, used by, or leased to the United States, or any department or agency thereof;

"(5) the offense is committed in the territorial sea (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) of the United States; or

"(6) the offense is committed in those places within the United States that are in the special maritime and territorial jurisdiction of the United States.

Jurisdiction shall exist over all principals and co-conspirators of an offense under this section, and accessories after the fact to any offense under this section, if at least one of such circumstances is applicable to at least one offender.

"(c) PENALTIES.—

"(1) Whoever violates this section shall be punished—

"(A) for a killing or if death results to any person from any other conduct prohibited by this section by death, or by imprisonment for any term of years or for life;

"(B) for kidnapping, by imprisonment for any term of years or for life;

"(C) for maiming, by imprisonment for not more than 35 years;

"(D) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than 30 years;

"(E) for destroying or damaging any structure, conveyance, or other real or personal property, by imprisonment for not more than 25 years;

"(F) for attempting or conspiring to commit an offense, for any term of years up to the maximum punishment that would have applied had the offense been completed; and

"(G) for threatening to commit an offense under this section, by imprisonment for not more than 10 years.

"(2) Notwithstanding any other provision of law, the court shall not place on probation any person convicted of a violation of this section; nor shall the term of imprisonment imposed under this section run concurrently with any other term of imprisonment.

"(d) LIMITATION ON PROSECUTION.—No indictment shall be sought nor any information filed for any offense described in this section until the Attorney General, or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions, makes a written certification that, in the judgment of the certifying official, such offense, or any activity preparatory to or meant to conceal its commission, is a Federal crime of terrorism.

"(e) PROOF REQUIREMENTS.—

"(1) The prosecution is not required to prove knowledge by any defendant of a jurisdictional base alleged in the indictment.

"(2) In a prosecution under this section that is based upon the adoption of State law, only the elements of the offense under State law, and not any provisions pertaining to criminal procedure or evidence, are adopted.

"(f) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction—

"(1) over any offense under subsection (a), including any threat, attempt, or conspiracy to commit such offense; and

"(2) over conduct which, under section 3 of this title, renders any person an accessory after the fact to an offense under subsection (a).

"(g) DEFINITIONS.—As used in this section—

"(1) the term 'conduct transcending national boundaries' means conduct occurring outside the United States in addition to the conduct occurring in the United States;

"(2) the term 'facility of interstate or foreign commerce' has the meaning given that term in section 1958(b)(2) of this title;

"(3) the term 'serious bodily injury' has the meaning prescribed in section 1365(g)(3) of this title;

"(4) the term 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law; and

"(5) the term 'Federal crime of terrorism' means an offense that—

"(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

"(B) is a violation of—

"(i) section 32 (relating to destruction of aircraft or aircraft facilities), 37 (relating to violence at international airports), 81 (relating to arson within special maritime and territorial jurisdiction), 175 (relating to biological weapons), 351 (relating to congressional, cabinet, and Supreme Court assassination, kidnapping, and assault), 831 (relating to nuclear weapons), 842(m) or (n) (relating to plastic explosives), 844(e) (relating to certain bombings), 844(f) or (i) (relating to arson and bombing of certain property), 956 (relating to conspiracy to commit violent acts in foreign countries), 1114 (relating to protection of officers and employees of the United States), 1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 (relating to hostage taking), 1361 (relating to injury of Government property), 1362 (relating to destruction of communication lines), 1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366 (relating to destruction of energy facility), 1751 (relating to Presidential and Presidential staff assassination, kidnapping, and assault), 2152 (relating to injury of harbor defenses), 2155 (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to production of defective national defense materials, premises, or utilities), 2280 (relating to violence against maritime navigation), 2281 (relating to violence against maritime fixed platforms), 2332 (relating to certain homicides and violence outside the United States), 2332a (relating to use of weapons of mass destruction), 2332b (relating to acts of terrorism transcending national boundaries), 2339A (relating to providing material support to terrorists), 2339B (relating to providing material support to terrorist organizations), or 2340A (relating to torture) of this title;

"(ii) section 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954; or

"(iii) section 46502 (relating to aircraft piracy), or 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49.

"(h) INVESTIGATIVE AUTHORITY.—In addition to any other investigatory authority with respect to violations of this title, the Attorney General shall have primary investigative responsibility for all Federal crimes of terrorism, and the Secretary of the Treasury shall assist the Attorney General at the request of the Attorney General.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the chapter 113B of title 18, United States Code, that relates to terrorism is amended by inserting after the item relating to section 2332a the following new item:

"2332b. Acts of terrorism transcending national boundaries.".

(c) STATUTE OF LIMITATIONS AMENDMENT.—Section 3286 of title 18, United States Code, is amended by—

(1) striking "any offense" and inserting "any non-capital offense";

(2) striking "36" and inserting "37";

(3) striking "2331" and inserting "2332";

(4) striking "2339" and inserting "2332a"; and

(5) inserting "2332b (acts of terrorism transcending national boundaries)," after "(use of weapons of mass destruction),".

(d) PRESUMPTIVE DETENTION.—Section 3142(e) of title 18, United States Code, is amended by inserting ", 956(a), or 2332b" after "section 924(c)".

(e) CONFORMING AMENDMENT.—Section 846 of title 18, United States Code, is amended by striking "In addition to any other" and all that follows through the end of the section.

SEC. 105. CONSPIRACY TO HARM PEOPLE AND PROPERTY OVERSEAS.

(a) IN GENERAL.—Section 956 of chapter 45 of title 18, United States Code, is amended to read as follows:

"§956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country

"(a)(1) Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to

effect any object of the conspiracy, be punished as provided in subsection (a)(2).

"(2) The punishment for an offense under subsection (a)(1) of this section is—

"(A) imprisonment for any term of years or for life if the offense is conspiracy to murder or kidnap; and

"(B) imprisonment for not more than 35 years if the offense is conspiracy to maim.

"(b) Whoever, within the jurisdiction of the United States, conspires with one or more persons, regardless of where such other person or persons are located, to damage or destroy specific property situated within a foreign country and belonging to a foreign government or to any political subdivision thereof with which the United States is at peace, or any railroad, canal, bridge, airport, airfield, or other public utility, public conveyance, or public structure, or any religious, educational, or cultural property so situated, shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be imprisoned not more than 25 years.".

(b) CLERICAL AMENDMENT.—The item relating to section 956 in the table of sections at the beginning of chapter 45 of title 18, United States Code, is amended to read as follows:

"956. Conspiracy to kill, kidnap, maim, or injure persons or damage property in a foreign country.".

SEC. 106. CLARIFICATION AND EXTENSION OF CRIMINAL JURISDICTION OVER CERTAIN TERRORISM OFFENSES OVERSEAS.

(a) AIRCRAFT PIRACY.—Section 46502(b) of title 49, United States Code, is amended—

(1) in paragraph (1), by striking "and later found in the United States";

(2) so that paragraph (2) reads as follows:

"(2) There is jurisdiction over the offense in paragraph (1) if—

"(A) a national of the United States was aboard the aircraft;

"(B) an offender is a national of the United States; or

"(C) an offender is afterwards found in the United States."; and

(3) by inserting after paragraph (2) the following:

"(3) For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.—Section 32(b) of title 18, United States Code, is amended—

(1) by striking ", if the offender is later found in the United States,"; and

(2) by inserting at the end the following: "There is jurisdiction over an offense under this subsection if a national of the United States was on board, or would have been on board, the aircraft; an offender is a national of the United States; or an offender is afterwards found in the United States. For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act.".

(c) MURDER OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 1116 of title 18, United States Code, is amended—

(1) in subsection (b), by adding at the end the following:

"(7) 'National of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).'"; and

(2) in subsection (c), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(d) PROTECTION OF FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 112 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "'national of the United States'," before "and"; and

(2) in subsection (e), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(e) THREATS AND EXTORTION AGAINST FOREIGN OFFICIALS AND CERTAIN OTHER PERSONS.—Section 878 of title 18, United States Code, is amended—

(1) in subsection (c), by inserting "'national of the United States'," before "and"; and

(2) in subsection (d), by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States.".

(f) KIDNAPPING OF INTERNATIONALLY PROTECTED PERSONS.—Section 1201(e) of title 18, United States Code, is amended—

(1) by striking the first sentence and inserting the following: "If the victim of an offense under subsection (a) is an internationally protected person outside the United States, the United States may exercise jurisdiction over the offense if (1) the victim is a representative, officer, employee, or agent of the United States, (2) an offender is a national of the United States, or (3) an offender is afterwards found in the United States."; and

(2) by adding at the end the following: "For purposes of this subsection, the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(g) VIOLENCE AT INTERNATIONAL AIRPORTS.—Section 37(b)(2) of title 18, United States Code, is amended—

(1) by inserting "(A)" before "the offender is later found in the United States"; and

(2) by inserting "; or (B) an offender or a victim is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)))" after "the offender is later found in the United States".

(h) BIOLOGICAL WEAPONS.—Section 178 of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding the following at the end:

"(5) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

SEC. 107. EXPANSION AND MODIFICATION OF WEAPONS OF MASS DESTRUCTION STATUTE.

Section 2332a of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "AGAINST A NATIONAL OR WITHIN THE UNITED STATES" after "OFFENSE";

(B) by inserting ", without lawful authority" after "A person who";

(C) by inserting "threatens," before "attempts or conspires to use, a weapon of mass destruction"; and

(D) by inserting "and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce" before the semicolon at the end of paragraph (2);

(2) in subsection (b)(2)(A), by striking "section 921" and inserting "section 921(a)(4) (other than subparagraphs (B) and (C))";

(3) in subsection (b), so that subparagraph (B) of paragraph (2) reads as follows:

"(B) any weapon that is designed to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;";

(4) by redesignating subsection (b) as subsection (c); and

(5) by inserting after subsection (a) the following new subsection:

"(b) OFFENSE BY NATIONAL OUTSIDE THE UNITED STATES.—Any national of the United States who, without lawful authority and outside the United States, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.".

SEC. 108. ADDITION OF OFFENSES TO THE MONEY LAUNDERING STATUTE.

(a) MURDER AND DESTRUCTION OF PROPERTY.—Section 1956(c)(7)(B)(ii) of title 18, United States Code, is amended by striking "or extortion;" and inserting "extortion, murder, or destruction of property by means of explosive or fire;".

(b) SPECIFIC OFFENSES.—Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting after "an offense under" the following: "section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member),";

(2) by inserting after "section 215 (relating to commissions or gifts for procuring loans)," the following: "section 351 (relating to Congressional or Cabinet officer assassination),";

(3) by inserting after "section 793, 794, or 798 (relating to espionage)," the following: "section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce),";

(4) by inserting after "section 875 (relating to interstate communications)," the following: "section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign country),";

(5) by inserting after "1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution)," the following: "section 1111 (relating to murder), section 1114 (relating to protection of officers and employees of the United States), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons),";

(6) by inserting after "section 1203 (relating to hostage taking)," the following: "section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),";

(7) by inserting after "section 1708 (theft from the mail)," the following: "section 1751 (relating to Presidential assassination),";

(8) by inserting after "2114 (relating to bank and postal robbery and theft)," the following: "section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms),"; and

(9) by striking "of this title" and inserting the following: "section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), section 2339A (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code".

SEC. 109. EXPANSION OF FEDERAL JURISDICTION OVER BOMB THREATS.

Section 844(e) of title 18, United States Code, is amended by striking "commerce," and inserting "interstate or foreign commerce, or in or affecting interstate or foreign commerce,".

SEC. 110. CLARIFICATION OF MARITIME VIOLENCE JURISDICTION.

Section 2280(b)(1)(A) of title 18, United States Code, is amended—

(1) in clause (ii), by striking "and the activity is not prohibited as a crime by the State in which the activity takes place"; and

(2) in clause (iii), by striking "the activity takes place on a ship flying the flag of a foreign country or outside the United States,".

SEC. 111. POSSESSION OF STOLEN EXPLOSIVES PROHIBITED.

Section 842(h) of title 18, United States Code, is amended to read as follows:

"(h) It shall be unlawful for any person to receive, possess, transport, ship, conceal, store, barter, sell, dispose of, or pledge or accept as security for a loan, any stolen explosive materials which are moving as, which are part of, which constitute, or which have been shipped or transported in, interstate or foreign commerce, either before or after such materials were stolen, knowing or having reasonable cause to believe that the explosive materials were stolen.".

SEC. 112. STUDY AND RECOMMENDATIONS FOR ASSESSING AND REDUCING THE THREAT TO LAW ENFORCEMENT OFFICERS FROM THE CRIMINAL USE OF FIREARMS AND AMMUNITION.

(a) The Secretary of the Treasury, in conjunction with the Attorney General, shall conduct a study and make recommendations concerning—

(1) the extent and nature of the deaths and serious injuries, in the line of duty during the last decade, for law enforcement officers, including—

(A) those officers who were feloniously killed or seriously injured and those that died or were seriously injured as a result of accidents or other non-felonious causes; and

(B) those officers feloniously killed or seriously injured with firearms, those killed or seriously injured with, separately, handguns firing handgun caliber ammunition, handguns firing rifle caliber ammunition, rifles firing rifle caliber ammunition, rifles firing handgun caliber ammunition and shotguns; and

(C) those officers feloniously killed or seriously injured with firearms, and killings or serious injuries committed with firearms taken by officers' assailants from officers, and those committed with other officers' firearms; and

(D) those killed or seriously injured because shots attributable to projectiles defined as "armor piercing ammunition" under 18, §921(a)(17)(B) (i) and (ii) pierced the protective material of bullet resistant vests and bullet resistant headgear; and

(2) whether current passive defensive strategies, such as body armor, are adequate to counter the criminal use of firearms against law officers; and

(3) the calibers of ammunition that are—

(A) sold in the greatest quantities; and

(B) their common uses, according to consultations with industry, sporting organizations and law enforcement; and

(C) the calibers commonly used for civilian defensive or sporting uses that would be affected by any prohibition on non-law enforcement sales of such ammunition, if such ammunition is capable of penetrating minimum level bullet resistant vests; and

(D) recommendations for increase in body armor capabilities to further protect law enforcement from threat.

(b) In conducting the study, the Secretary shall consult with other Federal, State and local officials, non-governmental organizations, including all national police organizations, national sporting organizations and national industry associations with expertise in this area and such other individuals as shall be deemed necessary. Such study shall be presented to Congress twelve months after the enactment of this Act and made available to the public, including any data tapes or data used to form such recommendations.

(c) There are authorized to be appropriated for the study and recommendations such sums as may be necessary.

TITLE II—INCREASED PENALTIES

SEC. 201. MANDATORY MINIMUM FOR CERTAIN EXPLOSIVES OFFENSES.

(a) INCREASED PENALTIES FOR DAMAGING CERTAIN PROPERTY.—Section 844(f) of title 18, United States Code, is amended to read as follows:

"(f) Whoever damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be fined under this title or imprisoned for not more than 25 years, or both, but—

"(1) if personal injury results to any person other than the offender, the term of imprisonment shall be not more than 40 years;

"(2) if fire or an explosive is used and its use creates a substantial risk of serious bodily injury to any person other than the offender, the term of imprisonment shall not be less than 20 years; and

"(3) if death results to any person other than the offender, the offender shall be subject to the death penalty or imprisonment for any term of years not less than 30, or for life.".

(b) CONFORMING AMENDMENT.—Section 81 of title 18, United States Code, is amended by striking "fined under this title or imprisoned not more than five years, or both" and inserting "imprisoned not more than 25 years or fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both".

(c) STATUTE OF LIMITATION FOR ARSON OFFENSES.—

(1) Chapter 213 of title 18, United States Code, is amended by adding at the end the following:

"§3295. Arson offenses

"No person shall be prosecuted, tried, or punished for any non-capital offense under section 81 or subsection (f), (h), or (i) of section 844 of this title unless the indictment is found or the information is instituted within 7 years after the date on which the offense was committed.".

(2) The table of sections at the beginning of chapter 213 of title 18, United States Code, is amended by adding at the end the following new item:

"3295. Arson offenses.".

(3) Section 844(i) of title 18, United States Code, is amended by striking the last sentence.

SEC. 202. INCREASED PENALTY FOR EXPLOSIVE CONSPIRACIES.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(n) Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter shall be subject to the same penalties (other than the penalty of death) as those prescribed for the offense the commission of which was the object of the conspiracy.".

SEC. 203. INCREASED AND ALTERNATE CONSPIRACY PENALTIES FOR TERRORISM OFFENSES.

(a) TITLE 18 OFFENSES.—

(1) Sections 32(a)(7), 32(b)(4), 37(a), 115(a)(1)(A), 115(a)(2), 1203(a), 2280(a)(1)(H), and 2281(a)(1)(F) of title 18, United States Code, are each amended by inserting "or conspires" after "attempts".

(2) Section 115(b)(2) of title 18, United States Code, is amended by striking "or attempted kidnapping" both places it appears and inserting ", attempted kidnapping, or conspiracy to kidnap".

(3)(A) Section 115(b)(3) of title 18, United States Code, is amended by striking "or attempted murder" and inserting ", attempted murder, or conspiracy to murder".

(B) Section 115(b)(3) of title 18, United States Code, is amended by striking "and 1113" and inserting ", 1113, and 1117".

(4) Section 175(a) of title 18, United States Code, is amended by inserting "or conspires to do so," after "any organization to do so,".

(b) AIRCRAFT PIRACY.—

(1) Section 46502(a)(2) of title 49, United States Code, is amended by inserting "or conspiring" after "attempting".

(2) Section 46502(b)(1) of title 49, United States Code, is amended by inserting "or conspiring to commit" after "committing".

SEC. 204. MANDATORY PENALTY FOR TRANSFERRING A FIREARM KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 924(h) of title 18, United States Code, is amended by striking "imprisoned not more than 10 years, fined in accordance with this title, or both." and inserting "subject to the same penalties as may be imposed under subsection (c) for a first conviction for the use or carrying of the firearm.".

SEC. 205. MANDATORY PENALTY FOR TRANSFERRING AN EXPLOSIVE MATERIAL KNOWING THAT IT WILL BE USED TO COMMIT A CRIME OF VIOLENCE.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(o) Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3) of this title) or drug trafficking crime (as defined in section 924(c)(2) of this title) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of the explosive materials.".

SEC. 206. DIRECTIONS TO SENTENCING COMMISSION.

The United States Sentencing Commission shall forthwith, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that section had not expired, amend the sentencing guidelines so that the chapter 3 adjustment relating to international terrorism only applies to Federal crimes of terrorism, as defined in section 2332b(g) of title 18, United States Code.

SEC. 207. AMENDMENT OF SENTENCING GUIDELINES TO PROVIDE FOR ENHANCED PENALTIES FOR A DEFENDANT WHO COMMITS A CRIME WHILE IN POSSESSION OF A FIREARM WITH A LASER SIGHTING DEVICE.

Not later than May 1, 1997, the United States Sentencing Commission shall, pursuant to its authority under section 994 of title 28, United

States Code, amend the sentencing guidelines (and, if the Commission considers it appropriate, the policy statements of the Commission) to provide that a defendant convicted of a crime shall receive an appropriate sentence enhancement if, during the crime—

(1) the defendant possessed a firearm equipped with a laser sighting device; or

(2) the defendant possessed a firearm, and the defendant (or another person at the scene of the crime who was aiding in the commission of the crime) possessed a laser sighting device capable of being readily attached to the firearm.

TITLE III—INVESTIGATIVE TOOLS

SEC. 301. STUDY OF TAGGING EXPLOSIVE MATERIALS, DETECTION OF EXPLOSIVES AND EXPLOSIVE MATERIALS, RENDERING EXPLOSIVE COMPONENTS INERT, AND IMPOSING CONTROLS OF PRECURSORS OF EXPLOSIVES.

(a) STUDY.—The Attorney General, in consultation with other Federal, State and local officials with expertise in this area and such other individuals as the Attorney General deems appropriate, shall conduct a study concerning—

(1) the tagging of explosive materials for purposes of detection and identification;

(2) technology for devices to improve the detection of explosives materials;

(3) whether common chemicals used to manufacture explosive materials can be rendered inert and whether it is feasible to require it; and

(4) whether controls can be imposed on certain precursor chemicals used to manufacture explosive materials and whether it is feasible to require it.

(b) EXCLUSION.—No study undertaken under this section shall include black or smokeless powder among the explosive materials considered.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report that contains the results of the study required by this section. The Attorney General shall make the report available to the public.

SEC. 302. EXCLUSION OF CERTAIN TYPES OF INFORMATION FROM WIRETAP-RELATED DEFINITIONS.

(a) DEFINITION OF "ELECTRONIC COMMUNICATION".—Section 2510(12) of title 18, United States Code, is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by inserting "or" at the end of subparagraph (C); and

(3) by adding a new subparagraph (D), as follows:

"(D) information stored in a communications system used for the electronic storage and transfer of funds;"

(b) DEFINITION OF "READILY ACCESSIBLE TO THE GENERAL PUBLIC".—Section 2510(16) of title 18, United States Code, is amended—

(1) by inserting "or" at the end of subparagraph (D);

(2) by striking "or" at the end of subparagraph (E); and

(3) by striking subparagraph (F).

SEC. 303. REQUIREMENT TO PRESERVE RECORD EVIDENCE.

Section 2703 of title 18, United States Code, is amended by adding at the end the following:

"(f) REQUIREMENT TO PRESERVE EVIDENCE.—A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records, and other evidence in its possession pending the issuance of a court order or other process. Such records shall be retained for a period of 90 days, which period shall be extended for an additional 90-day period upon a renewed request by the governmental entity.".

SEC. 304. DETENTION HEARING.

Section 3142(f) of title 18, United States Code, is amended by inserting "(not including any intermediate Saturday, Sunday, or legal holiday)" after "five days" and after "three days".

SEC. 305. PROTECTION OF FEDERAL GOVERNMENT BUILDINGS IN THE DISTRICT OF COLUMBIA.

The Attorney General is authorized—

(1) to prohibit vehicles from parking or standing on any street or roadway adjacent to any building in the District of Columbia which is in whole or in part owned, possessed, used by, or leased to the Federal Government and used by Federal law enforcement authorities; and

(2) to prohibit any person or entity from conducting business on any property immediately adjacent to any such building.

SEC. 306. STUDY OF THEFTS FROM ARMORIES; REPORT TO THE CONGRESS.

(a) STUDY.—The Attorney General of the United States shall conduct a study of the extent of thefts from military arsenals (including National Guard armories) of firearms, explosives, and other materials that are potentially useful to terrorists.

(b) REPORT TO THE CONGRESS.—Within 6 months after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on the study required by subsection (a).

TITLE IV—NUCLEAR MATERIALS

SEC. 401. EXPANSION OF NUCLEAR MATERIALS PROHIBITIONS.

Section 831 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "nuclear material" each place it appears and inserting "nuclear material or nuclear byproduct material";

(2) in subsection (a)(1)(A), by inserting "or the environment" after "property";

(3) so that subsection (a)(1)(B) reads as follows:

"(B)(i) circumstances exist which are likely to cause the death of or serious bodily injury to any person or substantial damage to property or the environment; or (ii) such circumstances are represented to the defendant to exist;";

(4) in subsection (a)(6), by inserting "or the environment" after "property";

(5) so that subsection (c)(2) reads as follows:

"(2) an offender or a victim is a national of the United States or a United States corporation or other legal entity;";

(6) in subsection (c)(3), by striking "at the time of the offense the nuclear material is in use, storage, or transport, for peaceful purposes, and";

(7) by striking "or" at the end of subsection (c)(3);

(8) in subsection (c)(4), by striking "nuclear material for peaceful purposes" and inserting "nuclear material or nuclear byproduct material";

(9) by striking the period at the end of subsection (c)(4) and inserting "; or";

(10) by adding at the end of subsection (c) the following:

"(5) the governmental entity under subsection (a)(5) is the United States or the threat under subsection (a)(6) is directed at the United States.";

(11) in subsection (f)(1)(A), by striking "with an isotopic concentration not in excess of 80 percent plutonium 238";

(12) in subsection (f)(1)(C) by inserting "enriched uranium, defined as" before "uranium";

(13) in subsection (f), by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively;

(14) by inserting after subsection (f)(1) the following:

"(2) the term 'nuclear byproduct material' means any material containing any radioactive isotope created through an irradiation process in the operation of a nuclear reactor or accelerator;";

(15) by striking "and" at the end of subsection (f)(4), as redesignated;

(16) by striking the period at the end of subsection (f)(5), as redesignated, and inserting a semicolon; and

(17) by adding at the end of subsection (f) the following:

"(6) the term 'national of the United States' has the meaning prescribed in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(7) the term 'United States corporation or other legal entity' means any corporation or other entity organized under the laws of the United States or any State, district, commonwealth, territory or possession of the United States.".

TITLE V—CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES

SEC. 501. DEFINITIONS.

Section 841 of title 18, United States Code, is amended by adding at the end the following:

"(o) 'Convention on the Marking of Plastic Explosives' means the Convention on the Marking of Plastic Explosives for the Purpose of Detection, Done at Montreal on 1 March 1991.

"(p) 'Detection agent' means any one of the substances specified in this subsection when introduced into a plastic explosive or formulated in such explosive as a part of the manufacturing process in such a manner as to achieve homogeneous distribution in the finished explosive, including—

"(1) Ethylene glycol dinitrate (EGDN), $C_2H_4(NO_3)_2$, molecular weight 152, when the minimum concentration in the finished explosive is 0.2 percent by mass;

"(2) 2,3-Dimethyl-2,3-dinitrobutane (DMNB), $C_6H_{12}(NO_2)_2$, molecular weight 176, when the minimum concentration in the finished explosive is 0.1 percent by mass;

"(3) Para-Mononitrotoluene (p-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass;

"(4) Ortho-Mononitrotoluene (o-MNT), $C_7H_7NO_2$, molecular weight 137, when the minimum concentration in the finished explosive is 0.5 percent by mass; and

"(5) any other substance in the concentration specified by the Secretary, after consultation with the Secretary of State and the Secretary of Defense, which has been added to the table in part 2 of the Technical Annex to the Convention on the Marking of Plastic Explosives.

"(q) 'Plastic explosive' means an explosive material in flexible or elastic sheet form formulated with one or more high explosives which in their pure form have a vapor pressure less than 10^{-4} Pa at a temperature of 25°C., is formulated with a binder material, and is as a mixture malleable or flexible at normal room temperature.".

SEC. 502. REQUIREMENT OF DETECTION AGENTS FOR PLASTIC EXPLOSIVES.

Section 842 of title 18, United States Code, is amended by adding at the end the following:

"(l) It shall be unlawful for any person to manufacture any plastic explosive which does not contain a detection agent.

"(m)(1) it shall be unlawful for any person to import or bring into the United States, or export from the United States, any plastic explosive which does not contain a detection agent.

"(2) Until the 15-year period that begins with the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the importation or bringing into the United States, or the exportation from the United States, of any plastic explosive which was imported, brought into, or manufactured in the United States before the effective

date of this subsection by or on behalf of any agency of the United States performing military or police functions (including any military Reserve component) or by or on behalf of the National Guard of any State.

"(n)(1) It shall be unlawful for any person to ship, transport, transfer, receive, or possess any plastic explosive which does not contain a detection agent.

"(2)(A) During the 3-year period that begins on the effective date of this subsection, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before such effective date by any person.

"(B) Until the 15-year period that begins on the date of entry into force of the Convention on the Marking of Plastic Explosives with respect to the United States has expired, paragraph (1) shall not apply to the shipment, transportation, transfer, receipt, or possession of any plastic explosive, which was imported, brought into, or manufactured in the United States before the effective date of this subsection by or on behalf of any agency of the United States performing a military or police function (including any military reserve component) or by or on behalf of the National Guard of any State.

"(o) It shall be unlawful for any person, other than an agency of the United States (including any military reserve component) or the National Guard of any State, possessing any plastic explosive on the effective date of this subsection, to fail to report to the Secretary within 120 days after the effective date of this subsection the quantity of such explosives possessed, the manufacturer or importer, any marks of identification on such explosives, and such other information as the Secretary may by regulations prescribe.".

SEC. 503. CRIMINAL SANCTIONS.

Section 844(a) of title 18, United States Code, is amended to read as follows:

"(a) Any person who violates subsections (a) through (i) or (l) through (o) of section 842 of this title shall be fined under this title, imprisoned not more than 10 years, or both.".

SEC. 504. EXCEPTIONS.

Section 845 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting "(l), (m), (n), or (o) of section 842 and subsections" after "subsections";

(2) in subsection (a)(1), by inserting "and which pertains to safety" before the semicolon; and

(3) by adding at the end the following:

"(c) It is an affirmative defense against any proceeding involving subsection (l), (m), (n), or (o) of section 842 of this title if the proponent proves by a preponderance of the evidence that the plastic explosive—

"(1) consisted of a small amount of plastic explosive intended for and utilized solely in lawful—

"(A) research, development, or testing of new or modified explosive materials;

"(B) training in explosives detection or development or testing of explosives detection equipment; or

"(C) forensic science purposes; or

"(2) was plastic explosive which, within 3 years after the effective date of this paragraph, will be or is incorporated in a military device within the territory of the United States and remains an integral part of such military device, or is intended to be, or is incorporated in, and remains an integral part of a military device that is intended to become, or has become, the property of any agency of the United States performing military or police functions (including any military reserve component) or the National Guard of any State, wherever such device is located. For purposes of this subsection, the term 'military device' includes shells, bombs, projectiles, mines, missiles, rockets, shaped charges, grenades, perforators, and similar devices lawfully manufactured exclusively for military or police purposes.".

SEC. 505. EFFECTIVE DATE.

The amendments made by this title shall take effect 1 year after the date of the enactment of this Act.

TITLE VI—IMMIGRATION-RELATED PROVISIONS

Subtitle A—Removal of Alien Terrorists

PART 1—REMOVAL PROCEDURES FOR ALIEN TERRORISTS

SEC. 601. FUNDING FOR DETENTION AND REMOVAL OF ALIEN TERRORISTS.

In addition to amounts otherwise appropriated, there are authorized to be appropriated for each fiscal year (beginning with fiscal year 1996) $5,000,000 to the Immigration and Naturalization Service for the purpose of detaining and removing alien terrorists.

PART 2—EXCLUSION AND DENIAL OF ASYLUM FOR ALIEN TERRORISTS

SEC. 611. DENIAL OF ASYLUM TO ALIEN TERRORISTS.

(a) IN GENERAL.—Section 208(a) of the Immigration and Nationality Act (8 U.S.C. 1158(a)) is amended by adding at the end the following: "The Attorney General may not grant an alien asylum if the Attorney General determines that the alien is excludable under subclause (I), (II), or (III) of section 212(a)(3)(B)(i) or deportable under section 241(a)(4)(B).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and apply to asylum determinations made on or after such date.

SEC. 612. DENIAL OF OTHER RELIEF FOR ALIEN TERRORISTS.

(a) WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by adding at the end the following new sentence: "For purposes of subparagraph (D), an alien who is described in section 241(a)(4)(B) shall be considered to be an alien for whom there are reasonable grounds for regarding as a danger to the security of the United States.".

(b) SUSPENSION OF DEPORTATION.—Section 244(a) of such Act (8 U.S.C. 1254(a)) is amended by striking "section 241(a)(4)(D)" and inserting "subparagraph (B) or (D) of section 241(a)(4)".

(c) VOLUNTARY DEPARTURE.—Section 244(e)(2) of such Act (8 U.S.C. 1254(e)(2)) is amended by inserting "under section 241(a)(4)(B) or" after "who is deportable".

(d) ADJUSTMENT OF STATUS.—Section 245(c) of such Act (8 U.S.C. 1255(c)) is amended—

(1) by striking "or" before "(5)", and

(2) by inserting before the period at the end the following: ", or (6) an alien who is deportable under section 241(a)(4)(B)".

(e) REGISTRY.—Section 249(d) of such Act (8 U.S.C. 1259(d)) is amended by inserting "and is not deportable under section 241(a)(4)(B)" after "ineligible to citizenship".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications filed before, on, or after such date if final action has not been taken on them before such date.

Subtitle B—Expedited Exclusion

SEC. 621. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) IN GENERAL.—Subsection (b) of section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended to read as follows:

"(b)(1)(A) If the examining immigration officer determines that an alien seeking entry—

"(i) is excludable under section 212(a)(6)(C) or 212(a)(7), and

"(ii) does not indicate either an intention to apply for asylum under section 208 or a fear of persecution,

the officer shall order the alien excluded from the United States without further hearing or review.

"(B) The examining immigration officer shall refer for an interview by an asylum officer under subparagraph (C) any alien who is excludable under section 212(a)(6)(C) or 212(a)(7) and has indicated an intention to apply for asylum under section 208 or a fear of persecution.

"(C)(i) An asylum officer shall promptly conduct interviews of aliens referred under subparagraph (B).

"(ii) If the officer determines at the time of the interview that an alien has a credible fear of persecution (as defined in clause (v)), the alien shall be detained for an asylum hearing before an asylum officer under section 208.

"(iii)(I) Subject to subclause (II), if the officer determines that the alien does not have a credible fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

"(II) The Attorney General shall promulgate regulations to provide for the immediate review by a supervisory asylum office at the port of entry of a determination under subclause (I).

"(iv) The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible. An alien who is eligible for such interview may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, according to regulations prescribed by the Attorney General. Such consultation shall be at no expense to the Government and shall not delay the process.

"(v) For purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of the alien's claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.

"(D) As used in this paragraph, the term 'asylum officer' means an immigration officer who—

"(i) has had professional training in country conditions, asylum law, and interview techniques; and

"(ii) is supervised by an officer who meets the condition in clause (i).

"(E)(i) An exclusion order entered in accordance with subparagraph (A) is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order against an alien who claims under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, after having been warned of the penalties for falsely making such claim under such conditions, to have been lawfully admitted for permanent residence.

"(ii) In any action brought against an alien under section 275(a) or section 276, the court shall not have jurisdiction to hear any claim attacking the validity of an order of exclusion entered under subparagraph (A).

"(2)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (1)(A) or (1)(C)(iii)(I), or

"(iii) if the conditions described in section 273(d) exist.

"(3) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.".

(b) CONFORMING AMENDMENT.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1), by striking "Deportation" and inserting "Subject to section 235(b)(1), deportation", and

(2) in the first sentence of paragraph (2), by striking "If" and inserting "Subject to section 235(b)(1), if".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act.

SEC. 622. JUDICIAL REVIEW.

(a) PRECLUSION OF JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) by amending the section heading to read as follows:

"JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION"; and

(2) by adding at the end the following new subsection:

"(e)(1) Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination, or to entertain any other cause or claim, arising from or relating to the implementation or operation of section 235(b)(1). Regardless of the nature of the action or claim, or the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection nor to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

"(2) Judicial review of any cause, claim, or individual determination covered under paragraph (1) shall only be available in habeas corpus proceedings, and shall be limited to determinations of—

"(A) whether the petitioner is an alien, if the petitioner makes a showing that the petitioner's claim of United States nationality is not frivolous;

"(B) whether the petitioner was ordered specially excluded under section 235(b)(1)(A); and

"(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence and is entitled to such review as is provided by the Attorney General pursuant to section 235(b)(1)(E)(i).

"(3) In any case where the court determines that an alien was not ordered specially excluded, or was not properly subject to special exclusion under the regulations adopted by the Attorney General, the court may order no relief beyond requiring that the alien receive a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d).

"(4) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order was in fact issued and whether it relates to the petitioner.".

(b) PRECLUSION OF COLLATERAL ATTACKS.—Section 235 of such Act (8 U.S.C. 1225) is amended by adding at the end the following new subsection:

"(d) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 or section 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under this section or sections 236 and 242.".

(c) CLERICAL AMENDMENT.—The item relating to section 106 in the table of contents of such Act is amended to read as follows:

"Sec. 106. Judicial review of orders of deportation and exclusion, and special exclusion.".

SEC. 623. EXCLUSION OF ALIENS WHO HAVE NOT BEEN INSPECTED AND ADMITTED.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) is amended by adding at the end the following new subsection:

"(d) Notwithstanding any other provision of this title, an alien found in the United States who has not been admitted to the United States after inspection in accordance with section 235 is deemed for purposes of this Act to be seeking entry and admission to the United States and shall be subject to examination and exclusion by the Attorney General under chapter 4. In the case of such an alien the Attorney General shall provide by regulation an opportunity for the alien to establish that the alien was so admitted.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the first day of the first month beginning more than 90 days after the date of the enactment of this Act.

Subtitle C—Improved Information and Processing

PART 1—IMMIGRATION PROCEDURES

SEC. 631. ACCESS TO CERTAIN CONFIDENTIAL INS FILES THROUGH COURT ORDER.

(a) LEGALIZATION PROGRAM.—Section 245A(c)(5) of the Immigration and Nationality Act (8 U.S.C. 1255a(c)(5)) is amended—

(1) by inserting "(i)" after "except that the Attorney General", and

(2) by inserting after "title 13, United States Code" the following: "and (ii) may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used—

"(I) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated; or

"(II) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the legalization application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant".

(b) SPECIAL AGRICULTURAL WORKER PROGRAM.—Section 210(b) of such Act (8 U.S.C. 1160(b)) is amended—

(1) in paragraph (5), by inserting ", except as allowed by a court order issued pursuant to paragraph (6)" after "consent of the alien", and

(2) in paragraph (6), by inserting after subparagraph (C) the following:

"Notwithstanding the previous sentence, the Attorney General may authorize an application to a Federal court of competent jurisdiction for, and a judge of such court may grant, an order authorizing disclosure of information contained in the application of the alien to be used (i) for identification of the alien when there is reason to believe that the alien has been killed or severely incapacitated, or (ii) for criminal law enforcement purposes against the alien whose application is to be disclosed if the alleged criminal activity occurred after the special agricultural worker application was filed and such activity involves terrorist activity or poses either an immediate risk to life or to national security, or would be prosecutable as an aggravated felony, but without regard to the length of sentence that could be imposed on the applicant.".

SEC. 632. WAIVER AUTHORITY CONCERNING NOTICE OF DENIAL OF APPLICATION FOR VISAS.

Section 212(b) of the Immigration and Nationality Act (8 U.S.C. 1182(b)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B);

(2) by striking "If" and inserting "(1) Subject to paragraph (2), if"; and

(3) by adding at the end the following new paragraph:

"(2) With respect to applications for visas, the Secretary of State may waive the application of paragraph (1) in the case of a particular alien or any class or classes of aliens excludable under subsection (a)(2) or (a)(3).".

PART 2—ASSET FORFEITURE FOR PASSPORT AND VISA OFFENSES

SEC. 641. CRIMINAL FORFEITURE FOR PASSPORT AND VISA RELATED OFFENSES.

Section 982 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting after paragraph (5) the following new paragraph:

"(6) The court, in imposing sentence on a person convicted of a violation of, or conspiracy to violate, section 1541, 1542, 1543, 1544, or 1546 of this title, or a violation of, or conspiracy to violate, section 1028 of this title if committed in connection with passport or visa issuance or use, shall order that the person forfeit to the United States any property, real or personal, which the person used, or intended to be used, in committing, or facilitating the commission of, the violation, and any property constituting, or derived from, or traceable to, any proceeds the person obtained, directly or indirectly, as a result of such violation."; and

(2) in subsection (b)(1)(B), by inserting "or (a)(6)" after "(a)(2)".

SEC. 642. SUBPOENAS FOR BANK RECORDS.

Section 986(a) of title 18, United States Code, is amended by inserting "1028, 1541, 1542, 1543, 1544, 1546," before "1956".

SEC. 643. EFFECTIVE DATE.

The amendments made by this subtitle shall take effect on the first day of the first month that begins more than 90 days after the date of the enactment of this Act.

Subtitle D—Employee Verification by Security Services Companies

SEC. 651. PERMITTING SECURITY SERVICES COMPANIES TO REQUEST ADDITIONAL DOCUMENTATION.

(a) IN GENERAL.—Section 274B(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(6)) is amended—

(1) by striking "For purposes" and inserting "(A) Except as provided in subparagraph (B), for purposes", and

(2) by adding at the end the following new subparagraph:

"(B) Subparagraph (A) shall not apply to a request made in connection with an individual seeking employment in a company (or division of a company) engaged in the business of providing security services to protect persons, institutions, buildings, or other possible targets of international terrorism (as defined in section 2331(1) of title 18, United States Code).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to requests for documents made on or after the date of the enactment of this Act with respect to individuals who are or were hired before, on, or after the date of the enactment of this Act.

Subtitle E—Criminal Alien Deportation Improvements

SEC. 661. SHORT TITLE.

This subtitle may be cited as the "Criminal Alien Deportation Improvements Act of 1995".

SEC. 662. ADDITIONAL EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), as amended by section 222 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416), is amended—

(1) in subparagraph (J), by inserting ", or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses)," after "corrupt organizations)";

(2) in subparagraph (K)—

(A) by striking "or" at the end of clause (i),

(B) by redesignating clause (ii) as clause (iii), and

(C) by inserting after clause (i) the following new clause:

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or";

(3) by amending subparagraph (N) to read as follows:

"(N) an offense described in paragraph (1)(A) or (2) of section 274(a) (relating to alien smuggling) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;";

(4) by amending subparagraph (O) to read as follows:

"(O) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 18 months;"

(5) in subparagraph (P), by striking "15 years" and inserting "5 years", and by striking "and" at the end;

(6) by redesignating subparagraphs (O), (P), and (Q) as subparagraphs (P), (Q), and (U), respectively;

(7) by inserting after subparagraph (N) the following new subparagraph:

"(O) an offense described in section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;"; and

(8) by inserting after subparagraph (Q), as so redesignated, the following new subparagraphs:

"(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which a sentence of 5 years' imprisonment or more may be imposed;

"(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to convictions entered on or after the date of the enactment of this Act, except that the amendment made by subsection (a)(3) shall take effect as if included in the enactment of section 222 of the Immigration and Nationality Technical Corrections Act of 1994.

SEC. 663. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ADMINISTRATIVE HEARINGS.—Section 242A(b) of the Immigration and Nationality Act (8 U.S.C. 1252a(b)), as added by section 130004(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended—

(1) in paragraph (2)—

(A) by striking "and" at the end of subparagraph (A) and inserting "or", and

(B) by amending subparagraph (B) to read as follows:

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.";

(2) in paragraph (3), by striking "30 calendar days" and inserting "14 calendar days";

(3) in paragraph (4)(B), by striking "proccedings" and inserting "proceedings";

(4) in paragraph (4)—

(A) by redesignating subparagraphs (D) and (E) as subparagraphs (F) and (G), respectively; and

(B) by adding after subparagraph (C) the following new subparagraphs:

"(D) such proceedings are conducted in, or translated for the alien into, a language the alien understands;

"(E) a determination is made for the record at such proceedings that the individual who appears to respond in such a proceeding is an alien subject to such an expedited proceeding under this section and is, in fact, the alien named in the notice for such proceeding;".

(5) by adding at the end the following new paragraph:

"(5) No alien described in this section shall be eligible for any relief from deportation that the Attorney General may grant in the Attorney General's discretion.".

(b) LIMIT ON JUDICIAL REVIEW.—Subsection (d) of section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a), as added by section 130004(b) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322), is amended to read as follows:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) PRESUMPTION OF DEPORTABILITY.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting after subsection (b) the following new subsection:

"(c) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 664. RESTRICTING THE DEFENSE TO EXCLUSION BASED ON 7 YEARS PERMANENT RESIDENCE FOR CERTAIN CRIMINAL ALIENS.

The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

SEC. 665. LIMITATION ON COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.

(a) IN GENERAL.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding at the end the following new subsection:

"(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to criminal proceedings initiated after the date of the enactment of this Act.

SEC. 666. CRIMINAL ALIEN IDENTIFICATION SYSTEM.

Section 130002(a) of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322) is amended to read as follows:

"(a) OPERATION AND PURPOSE.—The Commissioner of Immigration and Naturalization shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien identification system. The criminal alien identification system shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.".

SEC. 667. ESTABLISHING CERTAIN ALIEN SMUGGLING-RELATED CRIMES AS RICO-PREDICATE OFFENSES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by inserting "section 1028 (relating to fraud and related activity in connection with identification documents) if the act indictable under section 1028 was committed for the purpose of financial gain," before "section 1029";

(2) by inserting "section 1542 (relating to false statement in application and use of passport) if the act indictable under section 1542 was committed for the purpose of financial gain, section 1543 (relating to forgery or false use of passport) if the act indictable under section 1543 was committed for the purpose of financial gain, section 1544 (relating to misuse of passport) if the act indictable under section 1544 was committed for the purpose of financial gain, section 1546 (relating to fraud and misuse of visas, permits, and other documents) if the act indictable under section 1546 was committed for the purpose of financial gain, sections 1581–1588 (relating to peonage and slavery)," after "section 1513 (relating to retaliating against a witness, victim, or an informant),";

(3) by striking "or" before "(E)"; and

(4) by inserting before the period at the end the following: ", or (F) any act which is indictable under the Immigration and Nationality Act, section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) if the act indictable under such section of such Act was committed for the purpose of financial gain".

SEC. 668. AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

Section 2516(1) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (n),

(2) by redesignating paragraph (o) as paragraph (p), and

(3) by inserting after paragraph (n) the following new paragraph:

"(o) a felony violation of section 1028 (relating to production of false identification documents), section 1542 (relating to false statements in passport applications), section 1546 (relating to fraud and misuse of visas, permits, and other documents) of this title or a violation of section 274, 277, or 278 of the Immigration and Nationality Act (relating to the smuggling of aliens); or".

SEC. 669. EXPANSION OF CRITERIA FOR DEPORTATION FOR CRIMES OF MORAL TURPITUDE.

(a) IN GENERAL.—Section 241(a)(2)(A)(i)(II) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)(A)(i)(II)) is amended to read as follows:

"(II) is convicted of a crime for which a sentence of one year or longer may be imposed,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to aliens against whom deportation proceedings are initiated after the date of the enactment of this Act.

SEC. 670. MISCELLANEOUS PROVISIONS.

(a) USE OF ELECTRONIC AND TELEPHONIC MEDIA IN DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CODIFICATION.—

(1) Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.".

(2) Section 225 of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416) is amended by striking "and nothing in" and all that follows through "1252(i))".

(3) The amendments made by this subsection shall take effect as if included in the enactment of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416).

SEC. 671. CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.

No amendment made by this Act shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

SEC. 672. STUDY OF PRISONER TRANSFER TREATY WITH MEXICO.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State and the Attorney General shall submit to the Congress a report that describes the use and effectiveness of the Prisoner Transfer Treaty with Mexico (in this section referred to as the "Treaty") to remove from the United States aliens who have been convicted of crimes in the United States.

(b) USE OF TREATY.—The report under subsection (a) shall include the following information:

(1) The number of aliens convicted of a criminal offense in the United States since November 30, 1977, who would have been or are eligible for transfer pursuant to the Treaty.

(2) The number of aliens described in paragraph (1) who have been transferred pursuant to the Treaty.

(3) The number of aliens described in paragraph (2) who have been incarcerated in full compliance with the Treaty.

(4) The number of aliens who are incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the Treaty.

(5) The number of aliens described in paragraph (4) who are incarcerated in State and local penal institutions.

(c) EFFECTIVENESS OF TREATY.—The report under subsection (a) shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of, and full compliance with, the Treaty. In considering the recommendations under this subsection, the Secretary and the Attorney General shall consult with such State and local officials in areas disproportionately impacted by aliens convicted of criminal offenses as the Secretary and the Attorney General consider appropriate. Such recommendations shall address the following areas:

(1) Changes in Federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(2) Changes in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(3) Changes in the Treaty that may be necessary to increase the number of aliens convicted of crimes who may be transferred pursuant to the Treaty.

(4) Methods for preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the Treaty.

(5) Any recommendations of appropriate officials of the Mexican Government on programs to achieve the goals of, and ensure full compliance with, the Treaty.

(6) An assessment of whether the recommendations under this subsection require the renegotiation of the Treaty.

(7) The additional funds required to implement each recommendation under this subsection.

SEC. 673. JUSTICE DEPARTMENT ASSISTANCE IN BRINGING TO JUSTICE ALIENS WHO FLEE PROSECUTION FOR CRIMES IN THE UNITED STATES.

(a) ASSISTANCE TO STATES.—The Attorney General, in cooperation with the Commissioner of Immigration and Naturalization and the Secretary of State, shall designate an office within the Department of Justice to provide technical and prosecutorial assistance to States and political subdivisions of States in efforts to bring to justice aliens who flee prosecution for crimes in the United States.

(b) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, the Attorney General shall compile and submit to the Congress a report which assesses the nature and extent of the problem of bringing to justice aliens who flee prosecution for crimes in the United States.

SEC. 674. PRISONER TRANSFER TREATIES.

(a) NEGOTIATION.—Congress advises the President to begin to negotiate and renegotiate, not later than 90 days after the date of the enactment of this Act, bilateral prisoner transfer treaties. The focus of such negotiations shall be to expedite the transfer of aliens unlawfully in the United States who are incarcerated in United States prisons, to ensure that a transferred prisoner serves the balance of the sentence imposed by the United States courts, and to eliminate any requirement of prisoner consent to such a transfer.

(b) CERTIFICATION.—The President shall submit to the Congress, annually, a certification as to whether each prisoner transfer treaty in force is effective in returning aliens unlawfully in the United States who have committed offenses for which they are incarcerated in the United States to their country of nationality for further incarceration.

SEC. 675. INTERIOR REPATRIATION PROGRAM.

Not later than 180 days after the date of enactment of this Act, the Attorney General and the Commissioner of Immigration and Naturalization shall develop and implement a program in which aliens who previously have illegally entered the United States not less than 3 times and are deported or returned to a country contiguous to the United States will be returned to locations not less than 500 kilometers from that country's border with the United States.

SEC. 676. DEPORTATION OF NONVIOLENT OFFENDERS PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.

(a) IN GENERAL.—Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

"(2) The Attorney General is authorized to deport an alien in accordance with applicable procedures under this Act prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), and (ii) such deportation of the alien is appropriate and in the best interest of the United States; or

"(B) in the case of an alien in the custody of a State (or a political subdivision of a State), if the chief State official exercising authority with respect to the incarceration of the alien determines that (i) the alien is confined pursuant to a final conviction for a nonviolent offense (other than alien smuggling), (ii) such deportation is appropriate and in the best interest of the State, and (iii) submits a written request to the Attorney General that such alien be so deported.

"(3) Any alien deported pursuant to this subsection shall be notified of the penalties under the laws of the United States relating to the reentry of deported aliens, particularly the expanded penalties for aliens deported under paragraph (2).".

(b) REENTRY OF ALIEN DEPORTED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) amended by adding at the end the following new subsection:

"(c) Any alien deported pursuant to section 242(h)(2) who enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release. Such alien shall be subject to such other penalties relating to the reentry of deported aliens as may be available under this section or any other provision of law.".

SEC. 677. AUTHORIZING STATE AND LOCAL LAW ENFORCEMENT OFFICIALS TO ARREST AND DETAIN CERTAIN ILLEGAL ALIENS.

(a) IN GENERAL.—Notwithstanding any other provision of law, to the extent permitted by relevant State and local law, State and local law enforcement officials are authorized to arrest and detain an individual who—

(1) is an alien illegally present in the United States and

(2) has previously been convicted of a felony in the United States and deported or left the United States after such conviction,

but only after the State or local law enforcement officials obtain appropriate confirmation from the Immigration and Naturalization Service of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.

(b) COOPERATION.—The Attorney General shall cooperate with the States to assure that information in the control of the Attorney General, including information in the National Crime Information Center, that would assist State and local law enforcement officials in carrying out duties under subsection (a) is made available to such officials.

TITLE VII—AUTHORIZATION AND FUNDING

SEC. 701. FIREFIGHTER AND EMERGENCY SERVICES TRAINING.

The Attorney General may award grants in consultation with the Federal Emergency Management Agency for the purposes of providing specialized training or equipment to enhance the capability of metropolitan fire and emergency service departments to respond to terrorist attacks. To carry out the purposes of this section, there is authorized to be appropriated $5,000,000 for fiscal year 1996.

SEC. 702. ASSISTANCE TO FOREIGN COUNTRIES TO PROCURE EXPLOSIVE DETECTION DEVICES AND OTHER COUNTER-TERRORISM TECHNOLOGY.

There is authorized to be appropriated not to exceed $10,000,000 for fiscal years 1996 and 1997 to the President to provide assistance to foreign countries facing an imminent danger of terrorist attack that threatens the national interest of the United States or puts United States nationals at risk—

(1) in obtaining explosive detection devices and other counter-terrorism technology; and

(2) in conducting research and development projects on such technology.

SEC. 703. RESEARCH AND DEVELOPMENT TO SUPPORT COUNTER-TERRORISM TECHNOLOGIES.

There are authorized to be appropriated not to exceed $10,000,000 to the National Institute of Justice Science and Technology Office—

(1) to develop technologies that can be used to combat terrorism, including technologies in the areas of—

(A) detection of weapons, explosives, chemicals, and persons;

(B) tracking;

(C) surveillance;

(D) vulnerability assessment; and

(E) information technologies;

(2) to develop standards to ensure the adequacy of products produced and compatibility with relevant national systems; and

(3) to identify and assess requirements for technologies to assist State and local law enforcement in the national program to combat terrorism.

SEC. 704. SENSE OF CONGRESS.

It is the sense of Congress that, whenever practicable recipients of any sums authorized to be appropriated by this Act, should use the money to purchase American-made products.

TITLE VIII—MISCELLANEOUS

SEC. 801. STUDY OF STATE LICENSING REQUIREMENTS FOR THE PURCHASE AND USE OF HIGH EXPLOSIVES.

The Secretary of the Treasury, in consultation with the Federal Bureau of Investigation, shall conduct a study of State licensing requirements for the purchase and use of commercial high explosives, including detonators, detonating cords, dynamite, water gel, emulsion, blasting agents, and boosters. Not later than 180 days after the date of the enactment of this Act, the Secretary shall report to Congress the results of this study, together with any recommendations the Secretary determines are appropriate.

SEC. 802. COMPENSATION OF VICTIMS OF TERRORISM.

(a) REQUIRING COMPENSATION FOR TERRORIST CRIMES.—Section 1403(d)(3) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(d)(3)) is amended—

(1) by inserting "crimes involving terrorism," before "driving while intoxicated"; and

(2) by inserting a comma after "driving while intoxicated".

(b) FOREIGN TERRORISM.—Section 1403(b)(6)(B) of the Victims of Crime Act of 1984 (42 U.S.C. 10603(b)(6)(B)) is amended by inserting "are outside the United States (if the compensable crime is terrorism, as defined in section 2331 of title 18, United States Code), or" before "are States not having".

SEC. 803. JURISDICTION FOR LAWSUITS AGAINST TERRORIST STATES.

(a) EXCEPTION TO FOREIGN SOVEREIGN IMMUNITY FOR CERTAIN CASES.—Section 1605 of title 28, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "or" at the end of paragraph (5);

(B) by striking the period at the end of paragraph (6) and inserting "; or"; and

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

"(7) not otherwise covered by paragraph (2), in which money damages are sought against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources (as defined in section 2339A of title 18) for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency, except that the court shall decline to hear a claim under this paragraph—

"(A) if the act occurred in the foreign state against which the claim has been brought and the claimant has not afforded the foreign state a reasonable opportunity to arbitrate the claim in accordance with accepted international rules of arbitration;

"(B) if the claimant or victim was not a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred; or

"(C) if the act occurred in the foreign state against which the claim has been brought and that state establishes that procedures and remedies are available in such state which comport with fundamental fairness and due process."; and

(2) by adding at the end the following:

"(e) For purposes of paragraph (7) of subsection (a)—

"(1) the terms 'torture' and 'extrajudicial killing' have the meaning given those terms in section 3 of the Torture Victim Protection Act of 1991;

"(2) the term 'hostage taking' has the meaning given that term in Article 1 of the International Convention Against the Taking of Hostages; and

"(3) the term 'aircraft sabotage' has the meaning given that term in Article 1 of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

"(f) No action shall be maintained under subsection (a)(7) unless the action is commenced not later than 10 years after the date on which the cause of action arose. All principles of equitable tolling, including the period during which the foreign state was immune from suit, shall apply in calculating this limitation period.".

(b) EXCEPTION TO IMMUNITY FROM ATTACHMENT.—

(1) FOREIGN STATE.—Section 1610(a) of title 28, United States Code, is amended—

(A) by striking the period at the end of paragraph (6) and inserting ", or"; and

(B) by adding at the end the following new paragraph:

"(7) the judgment relates to a claim for which the foreign state is not immune under section 1605(a)(7), regardless of whether the property is or was involved with the act upon which the claim is based.".

(2) AGENCY OR INSTRUMENTALITY.—Section 1610(b)(2) of such title is amended—

(A) by striking "or (5)" and inserting "(5), or (7)"; and

(B) by striking "used for the activity" and inserting "involved in the act".

(c) APPLICABILITY.—The amendments made by this title shall apply to any cause of action arising before, on, or after the date of the enactment of this Act.

SEC. 804. STUDY OF PUBLICLY AVAILABLE INSTRUCTIONAL MATERIAL ON THE MAKING OF BOMBS, DESTRUCTIVE DEVICES, AND WEAPONS OF MASS DESTRUCTION.

(a) STUDY.—The Attorney General, in consultation with such other officials and individuals as the Attorney General deems appropriate, shall conduct a study concerning—

(1) the extent to which there are available to the public material in any medium (including print, electronic, or film) that instructs how to make bombs, other destructive devices, and weapons of mass destruction;

(2) the extent to which information gained from such material has been used in incidents of domestic and international terrorism;

(3) the likelihood that such information may be used in future incidents of terrorism; and

(4) the application of existing Federal laws to such material, the need and utility, if any, for additional laws, and an assessment of the extent to which the First Amendment protects such material and its private and commercial distribution.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report that contains the results of the study required by this section. The Attorney General shall make the report available to the public.

SEC. 805. COMPILATION OF STATISTICS RELATING TO INTIMIDATION OF GOVERNMENT EMPLOYEES.

(a) FINDINGS.—Congress finds that—

(1) threats of violence and acts of violence are mounting against Federal, State, and local government employees and their families in attempts to stop public servants from performing their lawful duties;

(2) these acts are a danger to our constitutional form of government; and

(3) more information is needed as to the extent of the danger and its nature so that steps can be taken to protect public servants at all levels of government in the performance of their duties.

(b) STATISTICS.—The Attorney General shall acquire data, for the calendar year 1990 and each succeeding calendar year about crimes and incidents of threats of violence and acts of violence against Federal, State, and local government employees in performance of their lawful duties. Such data shall include—

(1) in the case of crimes against such employees, the nature of the crime; and

(2) in the case of incidents of threats of violence and acts of violence, including verbal and implicit threats against such employees, whether or not criminally punishable, which deter the employees from the performance of their jobs.

(c) GUIDELINES.—The Attorney General shall establish guidelines for the collection of such data, including what constitutes sufficient evidence of noncriminal incidents required to be reported.

(d) ANNUAL PUBLISHING.—The Attorney General shall publish an annual summary of the data acquired under this section. Otherwise such data shall be used only for research and statistical purposes.

(e) EXEMPTION.—The United States Secret Service is not required to participate in any statistical reporting activity under this section with respect to any direct or indirect threats made against any individual for whom the United States Secret Service is authorized to provide protection.

SEC. 806. VICTIM RESTITUTION ACT OF 1995.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking "may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law" and inserting "shall order"; and

(ii) by adding at the end the following: "The requirement of this paragraph does not affect the power of the court to impose any other penalty authorized by law. In the case of a misdemeanor, the court may impose restitution in lieu of any other penalty authorized by law.";

(B) by adding at the end the following:

"(4) In addition to ordering restitution to the victim of the offense of which a defendant is convicted, a court may order restitution to any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(B) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (b)—

(A) by striking "and" at the end of paragraph (4);

(B) by redesignating paragraph (5) as paragraph (6); and

(C) by inserting after paragraph (4) the following new paragraph:

"(5) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and";

(5) in subsection (c) by striking "If the court decides to order restitution under this section, the" and inserting "The";

(6) by striking subsections (d), (e), (f), (g), and (h);

(7) by redesignating subsection (i) as subsection (m); and

(8) by inserting after subsection (c) the following:

"(d)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restitution order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender. A restitution order shall direct the offender to give appropriate notice to victims and other persons in cases where there are multiple victims or other persons who may receive restitution, and where the identity of such victims and other persons can be reasonably determined.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(e) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(f) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution to each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(g)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution to victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(h) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

"(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful; and

"(B) notify the court and the interested parties when an offender is 30 days in arrears in meeting those obligations; and

"(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.

"(i) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(j) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(k) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

"(l) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs."; and

(4) by adding at the end thereof the following new subsection:

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

SEC. 807. OVERSEAS LAW ENFORCEMENT TRAINING ACTIVITIES.

The Director of the Federal Bureau of Investigation is authorized to support law enforcement training activities in foreign countries for the purpose of improving the effectiveness of the United States in investigating and prosecuting transnational offenses.

SEC. 808. CLOSED CIRCUIT TELEVISED COURT PROCEEDINGS FOR VICTIMS OF CRIME.

(a) IN GENERAL.—Notwithstanding any provision of the Federal Rules of Criminal Procedure to the contrary, in order to permit victims of crime to watch criminal trial proceedings in cases where the venue of the trial is changed—

(1) out of the State in which the case was initially brought; and

(2) more than 350 miles from the location in which those proceedings originally would have taken place;

the courts involved shall, if donations under subsection (b) will defray the entire cost of doing so, order closed circuit televising of the proceedings to that location, for viewing by such persons the courts determine have a compelling interest in doing so and are otherwise unable to do so by reason of the inconvenience and expense caused by the change of venue.

(b) NO REBROADCAST.—No rebroadcast of the proceedings shall be made.

(c) LIMITED ACCESS.—

(1) GENERALLY.—No other person, other than official court and security personnel, or other persons specifically designated by the courts, shall be permitted to view the closed circuit televising of the proceedings.

(2) EXCEPTION.—The courts shall not designate a person under paragraph (1) if the presiding judge at the trial determines that testimony by that person would be materially affected if that person heard other testimony at the trial.

(d) DONATIONS.—The Administrative Office of the United States Courts may accept donations to enable the courts to carry out subsection (a). No appropriated money shall be used to carry out such subsection.

(e) DEFINITION.—As used in this section, the term "State" includes the District of Columbia and any other possession or territory of the United States.

SEC. 809. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for each of fiscal years 1996 through 2000 to the Federal Bureau of Investigation such sums as are necessary—

(1) to hire additional personnel, and to procure equipment, to support expanded investigations of domestic and international terrorism activities;

(2) to establish a Domestic Counterterrorism Center to coordinate and centralize Federal, State, and local law enforcement efforts in response to major terrorist incidents, and as a clearinghouse for all domestic and international terrorism information and intelligence; and

(3) to cover costs associated with providing law enforcement coverage of public events offering the potential of being targeted by domestic or international terrorists.

TITLE IX—HABEAS CORPUS REFORM

SEC. 901. FILING DEADLINES.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(d)(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

"(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

"(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

"(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim shall not be counted toward any period of limitation under this subsection.".

SEC. 902. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§2253. Appeal

"(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

"(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

"(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

"(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

"(B) the final order in a proceeding under section 2255.

"(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

"(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).".

SEC. 903. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

"Rule 22. Habeas corpus and section 2255 proceedings

"(a) APPLICATION FOR THE ORIGINAL WRIT.—An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application shall be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge shall not be permitted. The applicant may, pursuant to section 2253 of title 28, United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

"(b) CERTIFICATE OF APPEALABILITY.—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.".

SEC. 904. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

"(A) the applicant has exhausted the remedies available in the courts of the State; or

"(B)(i) there is an absence of available State corrective process; or

"(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

"(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

"(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

"(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

"(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

"(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.";

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

"(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

"(A) the claim relies on—

"(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

"(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

"(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense."; and

(5) by adding at the end the following new subsections:

"(h) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.".

SEC. 905. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second and fifth undesignated paragraphs; and

(2) by adding at the end the following new undesignated paragraphs:

"A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

"(1) the date on which the judgment of conviction becomes final;

"(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

"(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

"(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

"Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

"A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain—

"(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

"(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.".

SEC. 906. LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.

(a) CONFORMING AMENDMENT TO SECTION 2244(a).—Section 2244(a) of title 28, United States Code, is amended by striking "and the petition" and all that follows through "by such inquiry." and inserting ", except as provided in section 2255.".

(b) LIMITS ON SECOND OR SUCCESSIVE APPLICATIONS.—Section 2244(b) of title 28, United States Code, is amended to read as follows:

"(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

"(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

"(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

"(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

"(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

"(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

"(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

"(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

"(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

"(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

"(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.".

SEC. 907. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.
"2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
"2263. Filing of habeas corpus application; time requirements; tolling rules.
"2264. Scope of Federal review; district court adjudications.
"2265. Application to State unitary review procedure.
"2266. Limitation periods for determining applications and motions.

"§2261. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) This chapter is applicable if a State establishes by statute, rule of its court of last resort, or by another agency authorized by State law, a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in State post-conviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) Any mechanism for the appointment, compensation, and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing one or more counsels to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) The ineffectiveness or incompetence of counsel during State or Federal post-conviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal post-conviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§2262. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) Upon the entry in the appropriate State court of record of an order under section 2261(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application shall recite that the State has invoked the post-conviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus application under section 2254 within the time required in section 2263;

"(2) before a court of competent jurisdiction, in the presence of counsel, unless the prisoner has competently and knowingly waived such counsel, and after having been advised of the consequences, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254; or

"(3) a State prisoner files a habeas corpus petition under section 2254 within the time required by section 2263 and fails to make a substantial showing of the denial of a Federal right or is denied relief in the district court or at any subsequent stage of review.

"(c) If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution in the case, unless the court of appeals approves the filing of a second or successive application under section 2244(b).

"§2263. Filing of habeas corpus application; time requirements; tolling rules

"(a) Any application under this chapter for habeas corpus relief under section 2254 must be filed in the appropriate district court not later than 180 days after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review.

"(b) The time requirements established by subsection (a) shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition; and

"(3) during an additional period not to exceed 30 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have jurisdiction over the case upon the filing of a habeas corpus application under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus application within the time period established by this section.

"§2264. Scope of Federal review; district court adjudications

"(a) Whenever a State prisoner under capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall only consider a claim or claims that have been raised and decided on the merits in the State courts, unless the failure to raise the claim properly is—

"(1) the result of State action in violation of the Constitution or laws of the United States;

"(2) the result of the Supreme Court recognition of a new Federal right that is made retroactively applicable; or

"(3) based on a factual predicate that could not have been discovered through the exercise of due diligence in time to present the claim for State or Federal post-conviction review.

"(b) Following review subject to subsections (a), (d), and (e) of section 2254, the court shall rule on the claims properly before it.

"§2265. Application to State unitary review procedure

"(a) For purposes of this section, a 'unitary review' procedure means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) To qualify under this section, a unitary review procedure must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2261(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) Sections 2262, 2263, 2264, and 2266 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in such sections shall be understood as referring to unitary review under the State procedure. The reference in section 2262(a) to 'an order under section 2261(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, then the start of the 180-day limitation period under section 2263 shall be deferred until a transcript is made available to the prisoner or counsel of the prisoner.

"§2266. Limitation periods for determining applications and motions

"(a) The adjudication of any application under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters.

"(b)(1)(A) A district court shall render a final determination and enter a final judgment on any application for a writ of habeas corpus brought under this chapter in a capital case not later than 180 days after the date on which the application is filed.

"(B) A district court shall afford the parties at least 120 days in which to complete all actions, including the preparation of all pleadings and briefs, and if necessary, a hearing, prior to the submission of the case for decision.

"(C)(i) A district court may delay for not more than one additional 30-day period beyond the period specified in subparagraph (A), the rendering of a determination of an application for a writ of habeas corpus if the court issues a written order making a finding, and stating the reasons for the finding, that the ends of justice that would be served by allowing the delay outweigh the best interests of the public and the applicant in a speedy disposition of the application.

"(ii) The factors, among others, that a court shall consider in determining whether a delay in the disposition of an application is warranted are as follows:

"(I) Whether the failure to allow the delay would be likely to result in a miscarriage of justice.

"(II) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate briefing within the time limitations established by subparagraph (A).

"(III) Whether the failure to allow a delay in a case, that, taken as a whole, is not so unusual or so complex as described in subclause (II), but would otherwise deny the applicant reasonable time to obtain counsel, would unreasonably deny the applicant or the government continuity of counsel, or would deny counsel for the applicant or the government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

"(iii) No delay in disposition shall be permissible because of general congestion of the court's calendar.

"(iv) The court shall transmit a copy of any order issued under clause (i) to the Director of the Administrative Office of the United States Courts for inclusion in the report under paragraph (5).

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus following a remand by the court of appeals or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3)(A) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(B) No amendment to an application for a writ of habeas corpus under this chapter shall be permitted after the filing of the answer to the application, except on the grounds specified in section 2244(b).

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by petitioning for a writ of mandamus to the court of appeals. The court of appeals shall act on the petition for a writ or mandamus not later than 30 days after the filing of the petition.

"(5)(A) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the district courts with the time limitations under this section.

"(B) The report described in subparagraph (A) shall include copies of the orders submitted by the district courts under paragraph (1)(B)(iv).

"(c)(1)(A) A court of appeals shall hear and render a final determination of any appeal of an order granting or denying, in whole or in part, an application brought under this chapter in a capital case not later than 120 days after the date on which the reply brief is filed, or if no reply brief is filed, not later than 120 days after the date on which the answering brief is filed.

"(B)(i) A court of appeals shall decide whether to grant a petition for rehearing or other request for rehearing en banc not later than 30 days after the date on which the petition for rehearing is filed unless a responsive pleading is required, in which case the court shall decide whether to grant the petition not later than 30 days after the date on which the responsive pleading is filed.

"(ii) If a petition for rehearing or rehearing en banc is granted, the court of appeals shall hear and render a final determination of the appeal not later than 120 days after the date on which the order granting rehearing or rehearing en banc is entered.

"(2) The time limitations under paragraph (1) shall apply to—

"(A) an initial application for a writ of habeas corpus;

"(B) any second or successive application for a writ of habeas corpus; and

"(C) any redetermination of an application for a writ of habeas corpus or related appeal following a remand by the court of appeals en banc or the Supreme Court for further proceedings, in which case the limitation period shall run from the date the remand is ordered.

"(3) The time limitations under this section shall not be construed to entitle an applicant to a stay of execution, to which the applicant would otherwise not be entitled, for the purpose of litigating any application or appeal.

"(4)(A) The failure of a court to meet or comply with a time limitation under this section shall not be a ground for granting relief from a judgment of conviction or sentence.

"(B) The State may enforce a time limitation under this section by applying for a writ of mandamus to the Supreme Court.

"(5) The Administrative Office of United States Courts shall submit to Congress an annual report on the compliance by the courts of appeals with the time limitations under this section.".

(b) TECHNICAL AMENDMENT.—The table of chapters at the beginning of part VI of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

"154. Special habeas corpus procedures in capital cases ..... 2261".

(c) EFFECTIVE DATE.—Chapter 154 of title 28, United States Code (as added by subsection (a)) shall apply to cases pending on or after the date of enactment of this Act.

SEC. 908. TECHNICAL AMENDMENT.

Section 408(q) of the Controlled Substances Act (21 U.S.C. 848(q)) is amended by amending paragraph (9) to read as follows:

"(9) Upon a finding that investigative, expert, or other services are reasonably necessary for

the representation of the defendant, whether in connection with issues relating to guilt or the sentence, the court may authorize the defendant's attorneys to obtain such services on behalf of the defendant and, if so authorized, shall order the payment of fees and expenses therefor under paragraph (10). No ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality. Any such proceeding, communication, or request shall be transcribed and made a part of the record available for appellate review.".

SEC. 909. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstances shall not be affected thereby.

TITLE X—INTERNATIONAL COUNTERFEITING

SEC. 1001. SHORT TITLE.

This title may be cited as the "International Counterfeiting Prevention Act of 1996".

SEC. 1002. AUDITS OF INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.

(a) IN GENERAL.—The Secretary of the Treasury (hereafter in this section referred to as the "Secretary"), in consultation with the advanced counterfeit deterrence steering committee, shall—

(1) study the use and holding of United States currency in foreign countries; and

(2) develop useful estimates of the amount of counterfeit United States currency that circulates outside the United States each year.

(b) EVALUATION AUDIT PLAN.—

(1) IN GENERAL.—The Secretary shall develop an effective international evaluation audit plan that is designed to enable the Secretary to carry out the duties described in subsection (a) on a regular and thorough basis.

(2) SUBMISSION OF DETAILED WRITTEN SUMMARY.—The Secretary shall submit a detailed written summary of the evaluation audit plan developed pursuant to paragraph (1) to the Congress before the end of the 6-month period beginning on the date of the enactment of this Act.

(3) 1ST EVALUATION AUDIT UNDER PLAN.—The Secretary shall begin the first evaluation audit pursuant to the evaluation audit plan no later than the end of the 1-year period beginning on the date of the enactment of this Act.

(4) SUBSEQUENT EVALUATION AUDITS.—At least 1 evaluation audit shall be performed pursuant to the evaluation audit plan during each 3-year period beginning after the date of the commencement of the evaluation audit referred to in paragraph (3).

(c) REPORTS.—

(1) IN GENERAL.—The Secretary shall submit a written report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of each evaluation audit conducted pursuant to subsection (b) within 90 days after the completion of the evaluation audit.

(2) CONTENTS.—In addition to such other information as the Secretary may determine to be appropriate, each report submitted to the Congress pursuant to paragraph (1) shall include the following information:

(A) A detailed description of the evaluation audit process and the methods used to develop estimates of the amount of counterfeit United States currency in circulation outside the United States.

(B) The method used to determine the currency sample examined in connection with the evaluation audit and a statistical analysis of the sample examined.

(C) A list of the regions of the world, types of financial institutions, and other entities included.

(D) An estimate of the total amount of United States currency found in each region of the world.

(E) The total amount of counterfeit United States currency and the total quantity of each counterfeit denomination found in each region of the world.

(3) CLASSIFICATION OF INFORMATION.—

(A) IN GENERAL.—To the greatest extent possible, each report submitted to the Congress under this subsection shall be submitted in an unclassified form.

(B) CLASSIFIED AND UNCLASSIFIED FORMS.—If, in the interest of submitting a complete report under this subsection, the Secretary determines that it is necessary to include classified information in the report, the report shall be submitted in a classified and an unclassified form.

(d) SUNSET PROVISION.—This section shall cease to be effective as of the end of the 10-year period beginning on the date of the enactment of this Act.

(e) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing any entity to conduct investigations of counterfeit United States currency.

SEC. 1003. LAW ENFORCEMENT AND SENTENCING PROVISIONS RELATING TO INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.

(a) FINDINGS.—The Congress hereby finds the following:

(1) United States currency is being counterfeited outside the United States.

(2) The 103d Congress enacted, with the approval of the President on September 13, 1994, section 470 of title 18, United States Code, making such activity a crime under the laws of the United States.

(3) The expeditious posting of agents of the United States Secret Service to overseas posts, which is necessary for the effective enforcement of section 470 and related criminal provisions, has been delayed.

(4) While section 470 of title 18, United States Code, provides for a maximum term of imprisonment of 20 years as opposed to a maximum term of 15 years for domestic counterfeiting, the United States Sentencing Commission has failed to provide, in its sentencing guidelines, for an appropriate enhancement of punishment for defendants convicted of counterfeiting United States currency outside the United States.

(b) TIMELY CONSIDERATION OF REQUESTS FOR CONCURRENCE IN CREATION OF OVERSEAS POSTS.—

(1) IN GENERAL.—The Secretary of State shall—

(A) consider in a timely manner the request by the Secretary of the Treasury for the placement of such number of agents of the United States Secret Service as the Secretary of the Treasury considers appropriate in posts in overseas embassies; and

(B) reach an agreement with the Secretary of the Treasury on such posts as soon as possible and, in any event, not later than December 31, 1996.

(2) COOPERATION OF TREASURY REQUIRED.—The Secretary of the Treasury shall promptly provide any information requested by the Secretary of State in connection with such requests.

(3) REPORTS REQUIRED.—The Secretary of the Treasury and the Secretary of State shall each submit, by February 1, 1997, a written report to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate explaining the reasons for the rejection, if any, of any proposed post and the reasons for the failure, if any, to fill any approved post by such date.

(c) ENHANCED PENALTIES FOR INTERNATIONAL COUNTERFEITING OF UNITED STATES CURRENCY.—Pursuant to the authority of the United States Sentencing Commission under section 994 of title 28, United States Code, the Commission shall amend the sentencing guidelines prescribed by the Commission to provide an appropriate enhancement of the punishment for a defendant convicted under section 470 of title 18 of such Code.

TITLE XI—BIOLOGICAL WEAPONS RESTRICTIONS

SEC. 1101. SHORT TITLE.

This Act may be cited as the "Biological Weapons Enhanced Penalties Act of 1996.".

SEC. 1102. ATTEMPTS TO ACQUIRE UNDER FALSE PRETENSES.

Section 175(a) of title 18, United States Code, is amended by inserting "attempts to acquire under false pretenses, after "acquires,".

SEC. 1103. INCLUSION OF RECOMBINANT MOLECULES.

Section 175 of title 18, United States Code, is amended by inserting "recombinant molecules," after "toxin," each place it appears.

SEC. 1104. DEFINITIONS.

Section 173 of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting "or naturally occurring or bioengineered component of any such microorganism, virus, or infectious substance," after "infectious substance";

(2) in paragraph (2)—

(A) by inserting "the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances" after "means"; and

(B) by inserting ", and includes" after "production";

(3) in paragraph (4), by inserting "or a molecule, including a recombinant molecule," after "organism".

SEC. 1105. THREATENING USE OF CERTAIN WEAPONS.

Section 2332a of title 18, United States Code, is amended by inserting ", threatens," after "uses, or".

SEC. 1106. INCLUSION OF RECOMBINANT MOLECULES AND BIOLOGICAL ORGANISMS IN DEFINITION.

Section 2332a(b)(2)(C) of title 18, United States Code, is amended by striking "disease organism" and inserting "biological agent or toxin, as those terms are defined in section 178".

TITLE XII—COMMISSION ON THE ADVANCEMENT OF FEDERAL LAW ENFORCEMENT

SEC. 1201. ESTABLISHMENT.

There is established a commission to be known as the "Commission on the Advancement of Federal Law Enforcement" (in this title referred to as the "Commission").

SEC. 1202. DUTIES.

The Commission shall investigate, ascertain, evaluate, report, and recommend action to the Congress on the following matters:

(1) In general, the manner in which significant Federal criminal law enforcement operations are conceived, planned, coordinated, and executed.

(2) The standards and procedures used by Federal law enforcement to carry out significant Federal criminal law enforcement operations, and their uniformity and compatibility on an interagency basis, including standards related to the use of deadly force.

(3) The criminal investigation and handling by the United States Government, and the Federal law enforcement agencies therewith—

(A) on February 28, 1993, in Waco, Texas, with regard to the conception, planning, and

execution of search and arrest warrants that resulted in the deaths of 4 Federal law enforcement officers and 6 civilians;

(B) regarding the efforts to resolve the subsequent standoff in Waco, Texas, which ended in the deaths of over 80 civilians on April 19, 1993; and

(C) concerning other Federal criminal law enforcement cases, at the Commission's discretion, which have been presented to the courts or to the executive branch of Government in the last 25 years that are actions or complaints based upon claims of abuse of authority, practice, procedure, or violations of constitutional guarantees, and which may indicate a pattern or problem of abuse within an enforcement agency or a sector of the enforcement community.

(4) The necessity for the present number of Federal law enforcement agencies and units.

(5) The location and efficacy of the office or entity directly responsible, aside from the President of the United States, for the coordination on an interagency basis of the operations, programs, and activities of all of the Federal law enforcement agencies.

(6) The degree of assistance, training, education, and other human resource management assets devoted to increasing professionalism for Federal law enforcement officers.

(7) The independent accountability mechanisms that exist, if any, and their efficacy to investigate, address, and correct systemic or gross individual Federal law enforcement abuses.

(8) The extent to which Federal law enforcement agencies have attempted to pursue community outreach efforts that provide meaningful input into the shaping and formation of agency policy, including seeking and working with State and local law enforcement agencies on Federal criminal enforcement operations or programs that directly impact a State or local law enforcement agency's geographic jurisdiction.

(9) Such other related matters as the Commission deems appropriate.

SEC. 1203. MEMBERSHIP AND ADMINISTRATIVE PROVISIONS.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 5 members appointed as follows:

(1) 1 member appointed by the President pro tempore of the Senate.

(2) 1 member appointed by the minority leader of the Senate.

(3) 1 member appointed by the Speaker of the House of Representatives.

(4) 1 member appointed by the minority leader of the House of Representatives.

(5) 1 member (who shall chair the Commission) appointed by the Chief Justice of the Supreme Court.

(b) DISQUALIFICATION.—A person who is an officer or employee of the United States shall not be appointed a member of the Commission.

(c) TERMS.—Each member shall be appointed for the life of the Commission.

(d) QUORUM.—3 members of the Commission shall constitute a quorum but a lesser number may hold hearings.

(e) MEETINGS.—The Commission shall meet at the call of the Chair of the Commission.

(f) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including travel time, during which the member is engaged in the performance of the duties of the Commission.

SEC. 1204. STAFFING AND SUPPORT FUNCTIONS.

(a) DIRECTOR.—The Commission shall have a director who shall be appointed by the Chair of the Commission.

(b) STAFF.—Subject to rules prescribed by the Commission, the Director may appoint additional personnel as the Commission considers appropriate.

(c) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The Director and staff of the Commission shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates.

(d) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services of experts and consultants under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed per day the daily equivalent of the maximum annual rate of basic pay payable for GS-15 of the General Schedule.

SEC. 1205. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission may, for the purposes of carrying out this Act, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate. The Commission may administer oaths or affirmations to witnesses appearing before it. The Commission may establish rules for its proceedings.

(b) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(c) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this title. Upon request of the Chair of the Commission, the head of that department or agency shall furnish that information to the Commission.

(d) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this title.

(e) SUBPOENA POWER.—

(1) IN GENERAL.—The Commission may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence relating to any matter under investigation by the Commission. The attendance of witnesses and the production of evidence may be required from any place within the United States at any designated place of hearing within the United States.

(2) FAILURE TO OBEY SUBPOENA.—If a person refuses to obey a subpoena issued under paragraph (1), the Commission may apply to the United States district court for an order requiring that person to appear before the Commission to give testimony, produce evidence, or both, relating to the matter under investigation. The application may be made within the judicial district where the hearing is conducted or where that person is found, resides, or transacts business. Any failure to obey the order of the court may be punished by the court as civil contempt.

(3) SERVICE OF SUBPOENAS.—The subpoenas of the Commission shall be served in the manner provided for subpoenas issued by a United States district court under the Federal Rules of Civil Procedure for the United States district courts.

(4) SERVICE OF PROCESS.—All process of any court to which application is to be made under paragraph (2) may be served in the judicial district in which the person required to be served resides or may be found.

(f) IMMUNITY.—The Commission is an agency of the United States for the purpose of part V of title 18, United States Code (relating to immunity of witnesses).

SEC. 1206. REPORT.

The Commission shall transmit a report to the Congress and the public not later than 2 years after a quorum of the Commission has been appointed. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with the Commission's recommendations for such actions as the Commission considers appropriate.

SEC. 1207. TERMINATION.

The Commission shall terminate 30 days after submitting the report required by this title.

TITLE XIII—REPRESENTATION FEES

SEC. 1301. REPRESENTATION FEES IN CRIMINAL CASES.

(a) IN GENERAL.—Section 3006A of title 18, United States Code, is amended—

(1) in subsection (d)—

(A) by redesignating paragraphs (4), (5) and (6) as paragraphs (5), (6), and (7), respectively; and

(B) by inserting after paragraph (3) the following:

"(4) DISCLOSURE OF FEES.—The amounts paid under this subsection, for representation in any case, shall be made available to the public."; and

(2) in subsection (3) by adding at the end of the following:

"(4) DISCLOSURE OF FEES.—The amounts paid under this subsection for services in any case shall be made available to the public.".

(b) FEES AND EXPENSES AND CAPITAL CASES.—Section 408(q)(10) of the Controlled Substances Act (21 U.S.C. 848(q)(10)) is amended to read as follows:

"(10)(A) Compensation shall be paid to attorneys appointed under this subsection at a rate of not less than $75, and not more than $125, per hour for in-court and out-of-court time, Fees and expenses shall be paid for investigative, expert, and other reasonably necessary services authorized under paragraph (9) at the rates and in the amounts authorized under section 3006A of title 18, United States Code.

"(B) The amounts paid under this paragraph for services in any case shall be made available to the public.".

(c) EFFECTIVE DATE.—The amendments made by this section apply to cases commenced on or after the date of the enactment of this Act.

TITLE XIV—DEATH PENALTY AGGRAVATING FACTOR

SEC. 1401. DEATH PENALTY AGGRAVATING FACTOR.

Section 3592(c) of title 18, United States Code, is amended by adding after paragraph (15) the following:

"(16) MULTIPLE KILLINGS OR ATTEMPTED KILLINGS.—The defendant intentionally kills or attempts to kill more than one person in a single criminal episode.".

TITLE XV—FINANCIAL TRANSACTIONS WITH TERRORISTS

SEC. 1501. FINANCIAL TRANSACTIONS WITH TERRORISTS.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting before section 2333 the following:

"§2332c. Financial transactions

"(a) Except as provided in regulations made by the Secretary of State, whoever, being a United States person, knowing or having reasonable cause to know that a country is a country that has been designated under section 6(j) of the Export Administration Act (50 U.S.C. App. 2405) as a country supporting international terrorism; engages in a financial transaction with that country, shall be fined under this title or imprisoned not more than 10 years, or both.

"(b) As used in this section—

"(1) the term 'financial transaction' has the meaning given that term in section 1956(c)(4); and

"(2) the term 'United States person' means any United States citizen or national, permanent resident alien, juridical person organized under the laws of the United States, or any person in the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of the chapter of title 18, United States Code, to which the amendment of subsection (a) was made is amended by inserting before the item relating to section 2333 the following new item:

"2332c. Financial transactions.".

Mr. COATS. Mr. President, I ask unanimous consent that the Senate disagree to the amendments of the House, agree to the request for a conference, and that the Chair be authorized to appoint conferees on the part of the Senate.

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

Thereupon, the Presiding Officer (Mr. SMITH) appointed Mr. HATCH, Mr. THURMOND, Mr. SIMPSON, Mr. BIDEN, and Mr. KENNEDY conferees on the part of the Senate.

ORDERS FOR MONDAY, MARCH 25, 1996

Mr. COATS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. on Monday, March 25; further, that immediately following the prayer, the Journal of proceedings be approved to date, no resolutions come over under the rule, the call of the Calendar be dispensed with, the morning hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to the consideration of calendar No. 300, H.R. 1296, the Presidio legislation; and further, that Senator MURKOWSKI be recognized at that time to offer a substitute amendment.

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

PROGRAM

Mr. COATS. Mr. President, for the information of all Senators, the Senate will debate the Presidio legislation on Monday. No rollcall votes will occur during Monday's session. Senators are expected to offer and debate their amendments to H.R. 1296 on Monday. Any votes ordered on those amendments will be stacked to occur during Tuesday's session.

ADJOURNMENT UNTIL 10 A.M., MONDAY, MARCH 25, 1996

Mr. COATS. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:22 p.m., adjourned until Monday, March 25, 1996, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate March 21, 1996:

DEPARTMENT OF STATE

KENNETH C. BRILL, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CYPRUS.

GENTA HAWKINS HOLMES, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO AUSTRALIA.

THOMAS C. HUBBARD, OF TENNESSEE, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF THE PHILIPPINES AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PALAU.

DAY OLIN MOUNT, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF ICELAND.

GLEN ROBERT RASE, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO BRUNEI DARUSSALAM.

DEPARTMENT OF JUSTICE

CALVIN D. BUCHANAN, OF MISSISSIPPI, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF MISSISSIPPI FOR THE TERM OF 4 YEARS, VICE ROBERT Q. WHITEWELL, RESIGNED.